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**GENERAL**  
**DIGESTED TABLE AND INDEX**  
**OF**  
**CASES**

**ARGUED AND DETERMINED**

**IN THE**

**High Court of Chancery,**

**COMMENCING IN THE YEAR 1789, 29 GEO. III. LORD THURLOW,  
LORD CHANCELLOR,**

**AND**

**ENDING IN THE YEAR 1817, 57 GEO. III. LORD ELDON,  
LORD CHANCELLOR,**

**IN NINETEEN VOLUMES.**

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**VOL. XX.**

**CONCLUDING THE WORK.**

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**By FRANCIS VESEY, Esq.**  
**OF LINCOLN'S INN, BARRISTER AT LAW.**

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**LONDON:**  
**SAMUEL BROOKE, 35, PATER NOSTER ROW.**

**1833.**





# P R E F A C E

TO

VOLUME XX.

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**A**N attempt to give effect to the plan, proposed on a former occasion (1), combining the double object of Index and Digest, forms the Twentieth and concluding Volume of this Work.

**T**HE order of a well composed Treatise from the individuality of the subject and dependence of the parts leads to similar order in a compendium of the Contents : an advantage, not to be imparted in its full extent to a variety of subjects, thrown together by accident without more connexion than their mutual relation to some general title ; yet perhaps in some degree to be approached. With that view all the general titles, under which a search may be reasonably expected, are collected and arranged ; with cross-references and sub-divisions : to each title, general and sub-divided, are annexed short Abstracts of the several subjects ; each distinguished by a number, corresponding with that, under which the article abstracted follows in a more detailed form ; and to that detailed description is added a reference to the volume and page ; where full information will be found. The improvement, proposed from this original, and I be-

(1) See the Preface to the Second Edition of this Work (1827) ; here reprinted : immediately following this Address.



lieve new, method, is, that, instead of a complicated system of reference by numbers and letters, baffling the practitioner's search, and discouraging the student's inquiry, who after much trouble and delay perhaps find no more than that nothing can be found applicable to the subject, a glance will discover, whether information is to be obtained ; which by turning over one or two leaves may be immediately supplied : a process as simple as consulting a Dictionary : of more facility ; and with greater effect. Should this plan fail to realize the advantages anticipated, it is the result of much thought ; and no less attention and care in the execution than have been applied to those volumes, of which this forms the summary and sequel.

BUT wherefore, it will be asked, this superfluous care and waste of thought : so ill according with the spirit of the time ; the “ march of intellect ;” the rapid and expanded flow of knowledge, in an age universally, and suddenly, enlightened : while wisdom displays her treasures generally and gratuitously ; the glance of intuition supersedes the toil of study ; judgment, springing spontaneously, is matured without cultivation ; and the mechanick, who, vain of the mystery of his craft, would justly ridicule the awkward attempts of the philosopher, presumes, that he can grasp the extremities of science, try without danger the depths of jurisprudence (2) or theology, discharge the important functions of legislation and government, by the energy of his unaided genius ; or can receive sufficient instruction, should instruction be requisite,

(2) An instance has lately occurred of an unfortunate gentleman, forfeiting his life to justice through his misapplication of the principle, that a man's house is his castle, to a trespass on his land. *Moir's Case, Chelmsford Summer Assizes, 1830.*





“ themselves to the good sense both of lawyers and  
 “ the public” (5): that the outer door should not be a  
 protection against civil process: that voluntary agree-  
 ments should be equally binding in equity as those  
 for consideration: that the rule as to natural alle-  
 giance, (not correctly represented as depending merely  
 on the place of birth) (6), “ should give way; and be  
 “ accommodated to the present views and circum-  
 “ stances of society:” that principle is to be violated  
 under the colour of expedience by protecting the foul  
 effusion of immorality and blasphemy; that “ the con-  
 “ taminated character of the libel should form no im-  
 “ pediment;” and the vicious object is to be fostered  
 and promoted in a Court of Equity and Conscience:  
 that “ adherence to authority should be confined to  
 “ matters respecting real property and questions of  
 “ technical reasoning; and departed from on questions  
 “ of evidence, practice and personal contract or obli-  
 “ gation; and where confessedly repugnant to the real

(5) Mr. *Fearne's* Book will of course be involved in the general wreck; and the Professors under the new system may rest on the consolation, how little reason they have to apprehend, that the simplicity of their regenerated science will be perplexed, and the serenity of their studies ruffled, by another such work.

(6) The place of birth, if it was the effect of accident or necessity, had no influence at Common Law; as in the well known instance of children of Embassadors; and that mentioned by Lord *Coke*, 7 *Rep.* 6. 18, *Calvin's Case*: probably shipwreck or capture in the course of a voyage would have been considered as falling within the principle; and this relaxation of the general law has been extended by Stat. 25 *Edw.* 3. st. 2, to children of fathers and mothers at the time of the birth in allegiance to the King; the mother having passed the sea by license of her husband, (*Bacon v. Bacon*, *Cro. Ch.* 601); and by Stat. 7 *Ann.* c. 5. 10 *Ann.* c. 5. 4 *Geo.* 2. c. 21; and 13 *Geo.* 3. c. 21, to children and grandchildren, whose fathers or paternal grand-fathers were natural-born subjects.

“ purposes of justice; and no material inconvenience  
“ would result from a judicial correction of it;” ad-  
mitting “the caution, with which this principle is to  
“ be adopted;” or rather this arbitrary discretion to be  
exercised.

WITH much more of a similar character the Author disapproves the right of Appeal; the protection afforded to infants; the rule rejecting the evidence of Husband and Wife for and against each other; the effect of the Law of Evidence, “ especially in criminal  
“ cases, where the crime has been substantially proved;  
“ to allow a criminal upon a mere point of form to  
“ escape the punishment, which regularly ought to fol-  
“ low;” the doctrine of equitable waste; and the claim of a married woman on her own property, which her husband can obtain only in equity; charging the Judges in the same breath with departure from established legal rules and too strict an adherence to precedent. He asserts, that “ it is not fit, that every man should  
“ have the right of settling his property according to  
“ what he conceives the state of his family to require:  
“ at least, that the powers of enjoyment, particularly  
“ of allowing maintenance, of sale, and of appointing  
“ new trustees, ought in a considerable degree to be  
“ defined by the Legislature; that perhaps specific  
“ legislative forms of settlement should be prescribed;  
“ and, if trustees are necessary, public officers ought  
“ to be appointed for that purpose:” strong and galling fetters, to be riveted at the commencement of the liberal era upon the enjoyment and privilege of property in a Country, distinguished by the freedom of her institutions. The Author further recommends giving facility to the dissolution of marriage; and the admission of hearsay evidence generally.

UNWILLING to believe, that such opinions can have a general, or maintain a permanent, influence, I do not regret my time and exertions; with the hope, approaching confidence, that, as the *Digest*, when discovered at *Amalfi* (7), had effect in dispelling the ignorance of the darker ages, the valuable materials here collected will at a future, more auspicious, period be available to clear the mists, in which the affectation of a vain and false philosophy has involved us; aid the revival of learning; and contribute to restore, uphold and promote, true science upon principles sound and unerring, immutable and eternal.

HAVING endeavoured to take every opportunity of deriving advantage from fair and candid observation, I find it necessary to caution the reader, the student especially, against the hasty adoption of superficial and exuberant criticism: the confident critick not always proving the most competent judge: on the contrary the error in some instances consisting in the criticism alone: the effect perhaps of failure in minute attention, ample inquiry, just discrimination, and correct judgment: qualities essential to the due discharge of that office; and rarely found in union with those, which are the usual incidents, or inducements, to its inconsiderate, or less excusable assumption.

I AVAIL myself of this final address by requesting attention to a recent decision; holding an inn-keeper liable for property, lost in his house under circumstances, that appear to constitute a case of extreme

(7) This town, deriving some celebrity from the incident here mentioned, claims further distinction from the discovery of the Compass by *Gota* at the close of the thirteenth century.

severity; and neither consistent with principle, nor supported by authority. The case, *Kent v. Shuckard*, as it appears in 2 *Barn. & Adol.* 803, states, that the Action was to recover the value of a bag, containing bank-notes, lost by the plaintiff during the time he resided as a guest in the inn; and that the following facts appeared upon the trial. The plaintiff and his wife, with a young lady, Miss S. arrived at the defendant's hotel, (the *Old Ship*, at *Brighton*), in the evening of the 30th of *December*, 1830; and took a sitting-room and two bed-rooms; so situated that, the door of the sitting-room being open, a person there could see the entrances into both the bed-rooms. On the following day Mrs. *Kent* went into the bed-room; and laid a reticle, which contained the money, upon her bed; and afterwards returned into the sitting-room; leaving the door between that and the bed-room open. After she had remained in the sitting-room about five minutes, she sent Miss S. for the reticle; and it was not to be found (8). Mr. Justice *Gaselee*, reserved the point, made at the trial for the defendant, that the inn-keeper was responsible for goods and chattels only, not money; and directed the jury to find for the plaintiff; if they thought the money was lost or taken out of the inn. The verdict was for

(8) The amount of the loss is not stated. The account in the newspapers was, that the lady soon after her arrival at the inn went out to walk; leaving a reticle, containing sixty sovereigns, on the bed. Neither is it stated, nor easy to conceive, how the case was proved. The remark, that the wife could not prove it, would be superfluous; had not a work, that has received some notice in the preceding pages, recommended an alteration of the law, that would open a copious source of undue influence and domestic discord, or partial testimony. If another person observed this lady's inadvertence without giving her an opportunity of correcting it, that seems a very singular and important circumstance.

the plaintiff; and a motion in the Court of *King's Bench* for liberty to enter a Nonsuit upon the distinction between goods and money was refused.

THE general rule, upon which this Action is founded, stands upon a clear and sound principle: the security of the publick: especially against concert between the inn-keeper and robber, too frequent in other countries. To this rule there is an exception, upon a principle no less sound and clear; that, if the loss arises by the default of the guest, the inn-keeper shall not be charged. Lord *Coke*, 3 *Rep.* 33, *Calve's Case*, distinctly puts both the rule and the exception upon the default; adopting the word in the Writ, "*pro defectu hospitator*" &c.;" and states two instances, in which the inn-keeper shall not be charged: "if the guest's servant, or he, who comes with him, or he, whom he desires to be lodged with him," (marking the distinction, "if the inn-keeper appoints one to lodge with him,") "steals or carries away his goods;" and, "if the inn-keeper requires his guest, that he will put his goods in such a chamber under lock and key; and then he will warrant them; otherwise not: for the *fault* is in the guest;" having such companion or servant in the one case; and not complying with the terms in the other: yet in the former instance there might be no wilful or moral default by the guest; who might be deceived under the strongest reasons for a good opinion of his companion or servant.

IN this instance there could not be a doubt of the default; and, unless Lord *Coke's* clear and convincing reasoning is to be "swept away," as "antiquated doctrine," the only question was upon the application of the exception to these circumstances: but that ap-



pears to have been over-looked ; and the case to have been put, and decided, upon the dry point, that there is no distinction between money and goods. There is surely this distinction ; that money, as an object of strong temptation and easy abstraction, usually is, as it always ought to be, if not in the pocket, under the security of a lock ; not as goods, in the ordinary sense ; which are, and frequently must be, from their nature and quality exposed. The answer to the instance put of a valuable shawl, left by a lady in her bed-room, is, that it is not out of its place ; and, though prudence suggests, that the care of such an article should be, as near as may be, in proportion to its value, a legal principle, for general application, cannot rest upon so loose and fluctuating a basis. A more apposite instance might occur of moveable goods and chattels in the strict sense : had a case of jewels been thus lost, it would surely be no less unreasonable and unjust to charge the inn-keeper for the default, the gross laches, of the guest ; which, as it affects third persons, is in law equivalent to fraud. If this exception to the rule was required in former times, of more simplicity, how essential is it, that it shall now be maintained ; when from the magnitude of these establishments and the increase and diffusion of wealth the inn-keeper has no means of protection ; and may through the indiscretion of another, or by a deeply concerted fraud, be involved in ruin ; if, in addition to other obligations and risks, sufficiently onerous, incident to that station, he is to be responsible without limit under the decision, that has suggested these observations.

F. VESEY.

*October, 1833.*

# THE HISTORY OF

THE

REIGN OF

CHARLES THE FIRST

By JOHN BURNET, BISHOP OF SALISBURY.  
IN TWO VOLUMES.  
THE FIRST.  
FROM HIS MAJESTY'S DEPARTURE FROM  
PARLIAMENT, TO HIS RETURN TO  
PARLIAMENT.  
IN TWO VOLUMES.  
THE SECOND.  
FROM HIS RETURN TO PARLIAMENT, TO  
HIS DEATH.  
IN TWO VOLUMES.  
THE THIRD.  
FROM HIS DEATH, TO HIS BURIAL.  
IN TWO VOLUMES.  
THE FOURTH.  
FROM HIS BURIAL, TO HIS REBELLION.  
IN TWO VOLUMES.  
THE FIFTH.  
FROM HIS REBELLION, TO HIS DEATH.  
IN TWO VOLUMES.  
THE SIXTH.  
FROM HIS DEATH, TO HIS BURIAL.  
IN TWO VOLUMES.  
THE SEVENTH.  
FROM HIS BURIAL, TO HIS REBELLION.  
IN TWO VOLUMES.  
THE EIGHTH.  
FROM HIS REBELLION, TO HIS DEATH.  
IN TWO VOLUMES.  
THE NINTH.  
FROM HIS DEATH, TO HIS BURIAL.  
IN TWO VOLUMES.  
THE TENTH.  
FROM HIS BURIAL, TO HIS REBELLION.  
IN TWO VOLUMES.

LONDON, Printed by J. B. 1704.

# PREFACE

TO

THE SECOND EDITION,

*Reprinted; as originally published in the year 1827.*

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**I**T is not necessary to state circumstances, beyond the Editor's control, which have delayed another Edition of this Work. The inconvenience, that has resulted from the delay, may in some degree be compensated by the effect, that this Edition is not hastily brought out without the opportunity of preparation; but has grown up gradually under an attentive observation of what has been passing in Westminster Hall, with ample time for careful revision and examination of the Authorities. In availing myself of that opportunity I am not conscious of negligence; and I cannot without injustice and ingratitude omit this occasion to acknowledge the liberal assistance of my Friend Mr. BEAMES; the value of whose assistance, previously well established, may be further estimated by his able *Exposition of the Practice of the Court of Chancery, its defects, and proposed amendments, in the Explanatory Paper*, annexed to the Report under the Chancery Commission, of which he was a Member.

THE general plan of this Edition is to give the greatest scope of information in the most convenient and compendious form, by Notes; studiously avoiding the repetition of long lists of cases; and by the selection of such as contain collections of Authorities supplying a chain of reference, that may secure

to the Student the means of tracing his subject to its source; and to the practising Lawyer that important object, the economy of time. The occasional expression of my own opinion, perhaps of some use in suggesting or promoting inquiry, never assuming the disguise of authority is at least harmless.

IN reviewing these Volumes I find with satisfaction the occasion for correction to arise chiefly from the great alteration of the Law, by Statute as well as decision, since they were first submitted to the Profession; and that this Work, commenced at an early age, and prosecuted under difficulties peculiar to its nature, has sustained during more than thirty years the unremitted attention and pointed scrutiny of a learned and critical Tribunal; unassailed by censure, with a single exception; where it appears to be comprehended under the following general stricture upon Modern Reports in a Pamphlet, that has recently excited considerable notice:—

“REDUNDANCY is the vice of the age; and it  
 “appears in every thing. Perhaps it is no where  
 “more striking than in the length of Modern  
 “Reports. What *Peere Williams* would have com-  
 “pressed in a single page, in a Modern Report may  
 “occupy half a volume. The length indeed of  
 “Modern Reports is a serious evil; and a great  
 “obstruction to the dispatch of business. A case  
 “in *Peere Williams* may be read in five minutes;  
 “and its import perfectly comprehended. It may  
 “take as many hours even to read over a Modern  
 “Report; and in the mass of matter it may be  
 “difficult to discover the import of the whole.” \*

\* ‘*Considerations suggested by the Report made to his Majesty under a Commission authorising the Commissioners to make certain inquiries respecting the Court of Chancery.*’ (P. 64, 5.)

To the Author of these remarks, profoundly versed in the principles of Equity, and familiar with the Practice of the Court of Chancery, as he appears to be, it seems almost superfluous to point out the obvious causes of wide difference between ancient and modern works of this nature; that the transactions of modern times are utterly incapable of any thing like that compression, which the more simple dealings and habits of our Ancestors admitted; that the establishment of Principles in the early period took a much less extended range than their application in more recent times through a series of Authorities, often fluctuating and discordant, to the various and complicated affairs, resulting from the great increase of wealth, an excessive spirit of commercial enterprise, and a state of society, that has attained the highest point of cultivation and refinement; that the redundancy, complained of, in the chambers of the Conveyancer, the discussions at the Bar, and by necessary consequence on the Bench, and the unworthy habit of meeting a pressing authority by a groundless insinuation of a defect in the Report, are all combined against even moderate compression; much more to an extent, calculated upon the scale of *Tothill* rather than *Peere Williams*; who, with Lord Coke and all the best Reporters, has many cases of length in proportion to the variety, weight and importance, of the subject. Any competent and candid Judge will admit, that this Work could have been diffused to a far greater extent with much less trouble than has been applied to compress it within a compass, bearing a slight proportion to the period occupied. The Duke of *Norfolk's Case*, when the Principles, governing the law of Perpetuity, were established, will surely justify that upon the Will of Mr. *Thellusson*; when those Principles were for the first time successfully invaded

by a new device, that called forth the immediate interference of the Legislature. To the necessity, acknowledged by the Justice of the Bar, of compressing and combining arguments of distinguished merit, indulgence has been generally allowed: but the recommendation to abridge, at the imminent hazard of mutilating, a Judgment, the charge, that a Reporter has succeeded in giving the precise language, in which it was pronounced, and preserving unbroken the chain of close reasoning upon an abstruse subject, have the character of, at least, singular novelty. Who desires to see the learning of Lord *Hardwicke* or Lord *Eldon* reduced to *a single page; to be read in five minutes*; and how is that to be effected? To give, without further allusion to living Judges, one instance, that will meet universal assent; can a sentence, falling from Sir *William Grant*, be touched, or a word dropped, without injury?

THE condescension of the Bench and the friendship of the Bar lead me to believe, that my conclusion upon this would, if erroneous, have been corrected. From the general silence I do not infer disapprobation; and, looking beyond our own *Forum* to a similar contemporary Work, the valuable Reports of Lord *Redesdale's* decisions afford ample testimony, that the noble Lord, who pronounced those learned, and therefore diffuse, Judgments, and by his countenance, advice and assistance, sanctioned those Reports, for which we are indebted to the spirit of discussion introduced and uniformly encouraged by his Lordship \*, is upon this subject at variance with the Author of "*Considerations suggested by the Report*" under the *Chancery Commission*.

\* Preface to *Schoales* and *Le Froy's Reports*.

I HAVE been frequently pressed to complete this Work by the addition of a Digested Table or Index; and the necessity for such an addition, of an authentic character, is rendered more urgent by a publication, assuming that title, with attempts to give it an appearance of connexion and identity with the original Work; and, as I am informed, from motives sufficiently obvious venturing upon the hazardous experiment of alteration. I take this opportunity of declaring that publication to have been undertaken, not only without authority, but without even the courtesy of a communication; and of pointing out the extreme danger and mischief of alteration. The formation of the Abstracts, of which the Tables are composed, was attended with more difficulty than any other part of this Work, in the endeavour to comprise in a single proposition the substance of a long and intricate Judgment or opinion; and, where that from a complication of circumstances was impracticable, to guard against misleading the Reader to a reliance upon the Abstract by some intimation, that the case at large, or the text, must be consulted. Under these circumstances I shall attempt to combine the double object of Index and Digest upon a plan of copious reference and clear arrangement, at once comprehensive and simple; avoiding a repetition of the same proposition, which in so large a collection may frequently recur, and that minute and excessive attention to method, which is apt to create intricacy and confusion. This design is now in progress; and shall be completed, I hope in one volume, with no more delay than may be requisite to its due execution.

F. VESEY.

*September, 1827.*





## ADVERTISEMENT.

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**A**TTEMPTS having been made to give an appearance of connexion and identity with this Work to other publications, under the titles of “*Digested Index*,” and “*Supplement*,” exhibited for sale as the Twentieth and Twenty-first Volumes, under Mr. *Vesey*’s name; it should be generally known, that the only Editions, by Mr. *Vesey*’s authority and under his superintendence, are the Original Edition; and the Second Edition published in the year 1827, in Nineteen Volumes; now completed by this Twentieth and concluding Volume. As Mr. *Vesey* has no desire to appropriate whatever character may belong to the performance of another, neither is he inclined to be responsible for more than his own imperfections.

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*As described in the Preface.*

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The Abstracts more detailed; with corresponding numbers; and references to the case, volume and page.

Subdivided Titles, alphabetically arranged; with short and detailed Abstracts to each, corresponding numbers, and references to the case, volume and page; as under the General Title.

General references from the General Title to other Titles, general and subdivided: the latter distinguished by parenthesis.

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*Errata, &c. at the end.*

A

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TO THE

## SECOND EDITION

OF

### VESEY, JUN<sup>RS</sup>. REPORTS IN CHANCERY.

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1. Administration granted under statute 38 Geo. 3. c. 87; where the executor went to *Scotland*. It cannot be disputed in this Court; though it may at law. Though not for a limited time, it is for a limited purpose; viz. being made defendant to suits in equity. The effect of the return of the executor, in this instance the executor's executor, is, that he must be made a party

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- ADVANCEMENT.
- 1. Not by repair of houses descending to the heir.
  - 2. By purchase in name of wife or child.
  - 3. By will.
  - 4. Not by the share under an intestacy.
  - 5. By will.
1. Money laid out by the intestate on repairs of houses, which descended to his eldest son, as heir, is not an advancement, to be brought into hotchpot under the statute : otherwise, if the houses had been given to the son in the father's life. *Smith v. Smith.* - - - - - V. 721
2. Purchase in the name of a wife or child ordinarily not a resulting trust ; being considered an advancement. - VIII. 199
3. Provision by will considered an advancement in the life of the testator. - - - - - X. 489
4. Share of personal property under father's intestacy not considered an advancement by him in his life. - XVIII. 494
5. Provision by will considered as an advancement in the life-time. - - - - - XVIII. 494
- See *Assets 23. 24. Infant 16. Portion. Satisfaction 19. Trust 110. York.*

- ADVOWSON.
- 1. Statute 7 Ann. c. 18, not retrospective.
  - 2. In gross legal assets.
1. The statute 7 Ann. c. 18, enacting, that the interest of the patron of an advowson shall not be displaced by usurpation, is not retrospective. - - - - - V. 828
2. Advowson in gross assets by descent at common law for specialty debts. - - - - - VII. 447
- See *Fine 1.*

## AFFIDAVIT.—ALIEN.

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### AFFIDAVIT.

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### AFFIDAVIT to HOLD to BAIL.

See *Bail* 1. *Ne exeat Regno* 1.

### AFFINITY.

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### AGE.

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### AGENT.

See *Principal and Agent*.

### AGREEMENT.

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1. Legacy subject to the law of legatee's domicile.

1. Legacy to a married woman, subject of a foreign state,  
paid to the husband; to whom it would by the law of  
that country belong. - - - - -

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**ENEMY.**—1. Not covered by previous insurance.

2. Contract suspended by subsequent war.

3. Contract with, void.

4. Pleaded at law.

5. } Effect of license in favor of a British subject, re-

6. } sident with an enemy.

1. Insurance by a subject of this country upon foreign pro-  
perty does not cover a loss by capture in a war after-  
wards taking place between this country and that of  
the assured. Proof in bankruptcy therefore under such  
a policy expunged. *Ex parte Lee*. - - -

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2. The right of a foreigner by contract, generally, is only  
suspended by a subsequent war; and may be enforced  
upon the restoration of peace. In bankruptcy therefore  
a claim admitted: reserving the dividend. *Ex parte*  
*Boussmaker*. - - - - -

XIII. 71

3. Contract with alien enemy void. - - - - -

XIII. 71

4. At law the objection of alien enemy must be pleaded -

XIII. 72

5. Residence of a British subject in an enemy's country for  
the purpose of a trade, licensed by the government of  
this country, not a disability to sue or take out a com-  
mission of bankruptcy. *Ex parte Baglehole*. - - -

XVIII. 525

6. Commerce by a person resident in an enemy's country,  
as representative of the crown of this country, illegal;  
and the subject of prize; however beneficial to this  
country, unless authorized by license. - - -

XVIII. 528

See *Bail* 1. *Ne exeat Regno* 1. *Trust* 53.

## **ALIENATION.—ANNUITY.**

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### **ALIENATION. RESTRAINT OF.**

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### **ALIMONY.**

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*Regum* 3. 11. 22. 31.

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### **AMENDMENT.**

1. After answer. without prejudice to exceptions.

Amendments permitted after answer, without prejudice to exceptions, by praying injunctive upon a *deceit*, and a purpose of *equity* set by the executor, a person of no property, to the trustee. The amendment confined to the prayer of the injunction. *Jacob v. Hall*.

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### **ANNUAL RENTS AND PROFITS.**

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### **ANNUAL RESTS.**

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### **ANNUITY.**

1. Under special circumstances.
2. } In bar of dower: interest of arrears.
3. }
4. Distinguished from sale.
5. Securities within the act.
6. Assignment.
7. Construction of the act.
8. Previous or subsequent to the act.
9. Execution on bond.
10. Arrears not beyond the penalty.
11. Relief on general account.
12. Summary application.
13. Balance against grantor not recovered.
14. Distinguished from legacy.
15. Annuitant under the general character of legatee.

16. Recovery of consideration.
  17. Remedy on covenant for subsequent breaches ; though bond barred by certificate in bankruptcy (before the act 49 Geo. 3.)
  18. Sale before the Master takes effect from report confirmed.
  19. Distinguished from sale of dividends.
  20. Agreement not within the act.
  21. Exception in the act.
  22. Distinction between covenant and bond in bankruptcy, before 49 Geo. 3.
  23. Voidable by relation for want of enrolment.
- 
1. Devisee for life of a rent-charge out of an estate, devised in strict settlement, assigned it to creditors as a collateral security. Tenant for life with intent to redeem it for the annuitant gave bonds to the creditors on condition of giving up their securities to annuitant to be cancelled. Executors of obligor paid all the bonds but one ; which they disputed ; because though delivered by obligor to a third person for the creditor, when he should agree, it was not accepted till after death of obligor. This bond was recovered upon at law. Annuitant entitled as against the executors to the annuity disencumbered ; but not to arrears incurred in life of obligor ; and, as against tenant to the estate, to arrears since the death of obligor : but future payments left to agreement ; as, the heir at law of devisor of the annuity not being a party, execution of the trusts of the will could not be decreed. *Graham v. Graham.* - - - I. 272
  2. Interest of arrears of annuity in bar of dower refused. *Tew v. Earl of Winterton.* - - - I. 451
  3. For interest of arrears of annuity in bar of dower some inference of a contract for interest upon forbearance is necessary : compassion, poverty, or that she borrowed money, not sufficient. - - - I. 451
  4. Deed reciting an agreement for sale of a life interest in stock : a memorial being registered under the Annuity Act, and there being a covenant to pay any deficiency beyond the produce to the extent of the annual sum specified, and a proportionable share in case of death between the days of payment, this is an annuity ; not a sale. *Hood v. Burlton.* - - - II. 29
  5. Deeds to secure annuities are within the Annuity Act, as well as deeds granting them. *Hood v. Burlton.* - II. 29
  6. Assignment of an annuity is within the Annuity Act, and, if void, the assignee has no right to stand in the place of the original grantee, whom he has paid, for want of a good assignment ; nor will the Court direct an assignment, if the twenty days for enrolling the memorial are elapsed ; as it would be void at law. *Duke of Bolton v. Williams.* - - - II. 139



7. The word "such," in the first section of the Annuity Act, means every deed. &c. by which an annuity is granted; and does not refer merely to the instrument defectively stated in the memorial. - - - - - II. 154
8. The Annuity Act, with respect to annuities subsisting at that time, only restrains the action, till its provisions are complied with; not limiting the time; and does not, as in the case of subsequent annuities, make the security void. In the former case therefore the bond being by accident lost, the annuitant was admitted a creditor for the arrears of the annuity, the real debt in equity. *Toulmin v. Price.* - - - - - V. 235
9. No execution for the penalty of a bond securing an annuity; but only *toties quoties* for the accruing payments - - - - - V. 239
10. Arrears of an annuity secured by bond not allowed beyond the penalty in the administration of assets. *Mackworth v. Thomas.* - - - - - V. 329
11. Where an annuity is set aside, and an action brought for the money, an account is always taken of all money received under the annuity. - - - - - V. 608
12. The refusal of a summary application to set aside an annuity is no objection to the same ground being taken again upon an attempt to enforce it. - - - - - V. 617
13. Annuity void under the act: upon an account of the consideration and the payments under the annuity, if the balance is against the grantee, it has been decided in equity (*Byne v. Potter*, Vol. V. 609,) that it cannot be recovered. - - - - - VII. 74
14. Distinction between an annuity and a legacy; the former commences from the death; and the first payment is due at the end of the year: a legacy, generally, does not begin to carry interest till the end of the year. - - - - - VII. 96
15. An annuitant falls under the general character of legatee; unless distinguished by the testator; entitled therefore under a residuary bequest in favour of legatees. *Sibley v. Perry.* - - - - - VII. 522
16. Effect of the decisions, that the consideration for an annuity, void under the act, may be recovered with interest. - - - - - IX. 492
17. Bond and covenant to secure an annuity. Though the bond is barred by the certificate in bankruptcy, the penalty being forfeited by a breach, the annuitant may proceed upon the covenant for subsequent breaches; which could not be proved (a). - - - - - X. 351
18. Sale of an annuity before the Master takes effect from the confirmation of the report, and, the sale being on the 11th of *August*, and the report confirmed in *Michaelmas* Term, interest was given upon the purchase-money from the first day on which the report could have

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(a) See note, Vol. X. page 351.

## ANNUITY.

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been confirmed: viz. the first seal before the Term. <i>Twigg v. Fifield.</i> - - - - -	XIII. 517
19. A <i>bond fide</i> sale of dividends of stock is not within the Annuity Act. <i>Browne v. Like.</i> - - - - -	XIV. 302
20. Agreement to grant an annuity is not within the Annuity Act. Execution of such an agreement against the exe- cutors. <i>Nield v. Smith.</i> - - - - -	XIV. 491
21. Annuity, secured on dividends of stock, standing in trust among other things for the grantor for life, not within the exception in the Annuity Act. <i>Dupuis v.</i> <i>Edwards.</i> - - - - -	XVIII. 358
22. Distinction, before the statute 49 Geo. 3. c. 121. s. 17, authorizing proof in bankruptcy of annuities generally, (adopted by stat. 6 Geo. 4. c. 16. s. 54.) between cove- nant; under which arrears only could have been proved; and a bond, under which, if forfeited before the bank- ruptcy, the value also might have been proved. -	XIX. 249
23. Grant of an annuity voidable by relation for want of enrolment. - - - - -	XIX. 258

### CONSIDERATION—JURISDICTION—MEMORIAL— PAYMENT—VALUATION.

CONSIDERATION.—1. Inadequacy. Market price.	
2. }	Market price. Distinction between lives
3. }	of grantor and grantee.
1. An annuity cannot be set aside upon mere inadequacy of price; which can be applied only as evidence of fraud. The notion of a market price, ascertained in the usual way upon the principle of calculation at an insurance office, is not a just criterion of the value. Therefore a bill to set aside an annuity, the circumstances not amounting to fraud, was dismissed with costs. <i>Low v.</i> <i>Barchard.</i> - - - - -	VIII. 133
2. Fifteen years purchase the market price of an annuity for the grantee's life; much less for the grantor's. -	XIX. 251
3. Fifteen years purchase the ordinary price of an annuity for the grantee's life; aged thirty-two. - - - - -	XIX. 258
JURISDICTION.—1. }	
2. }	At law limited.
3.	Recovery of balance at law.
4.	In equity on legal objections.
5.	Recovery of purchase-money at law.
6.	In equity for delivering up void instruments.
7.	In equity even upon legal objections.
8.	In equity on objections to memorial.
1. Courts of common law, which will on their general juris- diction enter into the validity of the warrant of attorney or judgment on motion, in the particular application under the Annuity Act, will only set aside the judg-	

- ment or execution or warrant; but cannot order the bond to be delivered up. - - - - - II. 154
2. Courts of law have no authority to order instruments void under the Annuity Act to be delivered up, farther than the Act expressly gives it. - - - - - VII. 18
3. Annuity void under the Act: at law the balance of the consideration may be recovered, deducting the payments under the annuity. - - - - - VII. 23
4. Jurisdiction in equity to set aside an annuity upon legal objections. - - - - - VIII. 135
5. Where an annuity is set aside, the purchase-money may be recovered at law. - - - - - VIII. 136
6. Jurisdiction in equity to order instruments, void under the Annuity Act, to be delivered up. Several objections put in a course of trial. *Underhill v. Horwood*. X. 209
7. Jurisdiction of equity to order instruments to be delivered up, even upon legal objections, as under the Annuity Act, arising incidentally in the exercise of equitable jurisdiction; as upon extreme inadequacy of consideration, and contribution among several sureties. *Ware v. Horwood*. - - - - - XIV. 28
8. Jurisdiction of a Court of equity upon objections to the memorial of an annuity. *Dupuis v. Edwards*. - - - - - XVIII. 358

## MEMORIAL.—1. }

2. } Defective.

3. }

4. Defective. General account of consideration, &amp;c. and annuity payments.

5. Defective. Grantee over-paid, securities delivered up with costs.

6. Defective. Relief upon the principle of the invalidity of the grant, not redemption. General account of original consideration to an assignee at under-value and of payments, &amp;c.

7. Defective. Premiums of insurance and costs not allowed.

8. Defective. General account of consideration and payments. Evidence.

9. Necessary to annuity out of dividends; not an actual transfer. Memorial defective. No costs: the objection not being taken, until consideration repaid.

10. } Insufficient objections.

11. }

12. Defective.

13. When to state particular remedies; and whether trusts.

14. For want of, mutual account, &amp;c. decreed.

1. Assignment of stock in trust to pay two annuities of £50 each to different persons for separate considerations of £100 each: the memorial was for one annuity of £100

- to the trustee in trust to pay £50 to each *cestuy que* trust for the sum of £800; and omitted a contingent interest: the annuities are void, the memorial not being sufficient within the Annuity Act; as not containing a true description of the annuities; nor stating all the interests. *Hood v. Burlton.* - - - - - II. 29
2. Annuities void; the real amount, the consideration and mode of payment, not being truly stated in the memorial; and the bond and warrant of attorney being only generally mentioned, without the dates and names of the parties. *Duke of Bolton v. Williams.* - - - II. 138
3. All the instruments securing an annuity make but one assurance; and, if the memorial is defective as to one, that vitiates the whole. *Duke of Bolton v. Williams.* II. 138
4. An annuity secured by a bond and a term for years being void, the memorial not taking notice of the term, and the clause of redemption, and stating the payment of the consideration in money, though it was paid by draft, a general account was decreed of the consideration with interest and costs, and of all money received under the annuity: the balance to be paid to the defendant, if any; the securities delivered up; and a conveyance. *Byne v. Vizian.* - - - - - V 604
5. Bill to set aside an annuity, secured by a term for years and a bond, upon objections to the memorial for not containing a clause of redemption, for not stating the consideration truly, and other defects. 'The defendant admitting he had received more than was due to him for principal and interest, the securities were decreed to be delivered up to be cancelled, with costs. *Byne v. Potter.* - - - - - V. 609
6. Annuity void, the memorial not containing the clause of redemption, not stating the consideration truly, and being otherwise defective, was set aside by the decree; but the plaintiff having failed in two applications to the Court of King's Bench upon some of the objections, and having in the interval been a party to the assignment to the defendant, the account was confined to the filing of the bill. The defendant was held entitled to the original consideration, though exceeding the sum paid on the assignment. Upon the plaintiff's appeal from the decree at the Rolls, the decree was reversed; and an account was directed of the consideration paid by the original grantee of the annuity, with interest at 5 per cent.; and of the payments of the annuity to the grantee or any persons claiming under him by assignment or otherwise; to be applied in discharge of the interest and principal of the consideration: and if the consideration with interest shall appear fully repaid, or, if not, upon payment by the plaintiff of what shall be remaining due from him, the securities to be delivered

up, &c. without costs: the Lord Chancellor's opinion being in favour of the jurisdiction; that the principle of the relief is, not redemption, but the invalidity of the grant; and that the assignee, unless under special circumstances, is in the situation of the grantee. *Bromley v. Holland.* - - - - -

V. 610. VII

7. An annuity being void, the memorial not containing a clause of re-purchase, the grantee was not allowed in the account the premiums of insurance of the life of the grantor and costs incurred in supporting the annuity.

*Ex parte Shaw.* - - - - -

V. 6

8. Annuity secured by bond and a trust of rents and dividends being void, the memorial omitting a clause of redemption, and the trust, and stating the consideration untruly, a general account was decreed of the purchase-money from the actual payment, which was subsequent to the date of the deeds; and of the premiums paid by the grantee for insuring the grantor's life; and an account of all sums received under the annuity; with interest respectively: on payment of the balance and the costs by the plaintiff the securities to be delivered up, &c.: the bill offering to pay principal and interest, and any other fair and reasonable demands. A letter from the grantor, written prior to the grant in the course of another negotiation between the parties, which did not take place, was admitted in evidence; but no farther than that he had upon that occasion proposed the insurance of his life as a reasonable term. *Hoffman v. Cooke.* - - - - -

V. 6

9. Stock vested in trustees to the uses of a settlement. An annuity granted by the husband out of the dividends, to which he was entitled for life, the trustees giving a power of attorney to receive the dividends, and covenanting not to revoke it, and to execute any other, &c. requires a memorial; not being an actual transfer within the 8th section of the Annuity Act. The annuity set aside upon objections to the memorial; particularly in not stating the covenant by the trustees. As to the objection to payment by a draft on a banker, *quære*. Distinction, whether the draft is drawn by the party or a third person. No costs: the grantor not taking the objection, till the consideration was repaid, and the chance turned against him. *Duff v. Atkinson.* - - -
10. Bill under the Annuity Act, to set aside an annuity, dismissed: the objections not prevailing; viz. 1st. that the memorial expressed the consideration to have been paid at the date and execution of the deeds; one of the grantors only having executed on the day of the date; the other some days afterwards: occasioned merely by the residence of the one in *Wales*, the other in *London*. 2dly. that £30 was immediately after pay-

VIII. 57

ment of the consideration paid by the grantor to the attorney for the expense of the transaction; not by way of a colourable reduction of the consideration. 3dly. that the consideration was paid by an agent; that fact, though not stated in the body of the deed, appearing by the receipt indorsed, and being stated in the memorial. Whether it is necessary to state, not only, with whose money the payment is made, but also the hand, by which it is made, *quære*. *Philipps v. Crawford*. -

IX. 214

11. Decree on the three objections (No. 10.) affirmed on appeal. *Philipps v. Crawford*. - - - -

XIII. 475

12. Omission in the memorial of an annuity under the statute 17 Geo. 2. c. 26. (repealed by 53 Geo. 3. c. 141.) of a proviso for stay of execution under a judgment, one of the securities, until twenty days after default, was fatal. *Dupuis v. Edwards*. - - - -

XVIII. 858

13. Not necessary under the statute 17 Geo. 3. c. 126. to insert in the memorial of an annuity a covenant for payment, or any particular remedy, except as creating a trust within the act; and as to the necessity of stating the trusts, *quære*. *Dupuis v. Edwards*. - - - -

XVIII. 358

14. Decree on setting aside an annuity, for want of a memorial registered, an account of the consideration, with interest and costs, and of all the annual payments: the balance on either side to be paid; the securities delivered up; and a reconveyance. *Holbrook v. Sharpey*. -

XIX. 131

PAYMENT.—1. First at a year's end.

1. The first payment of an annuity at the end of a year. -

IX. 553

VALUATION.—1. On bankruptcy.

2. On insolvency.

3. On bankruptcy under special circumstances.

4. On bankruptcy.

5. } As assets.

6. }  
7. On bankruptcy.

1. Equitable arrangement in bankruptcy by setting a value upon an annuity; the penalty being forfeited. - -

XIV. 574

2. What is the debt, and how to be ascertained, upon an annuity bond, forfeited at the time of the grantor's discharge by an act of insolvency, *quære*. - - -

XIV. 574

3. Annuity, part of the price of an estate, for the life of the grantee, aged thirty-two, taken at an under-value, from his state of health, then not insurable, but afterwards restored; and secured on bond and judgment. The value, to be proved on the bankruptcy of the grantor, two years afterwards, is, under the peculiar circumstances, not the market price; nor the price paid originally, with the variation occasioned by the lapse of time, (since established as the general rule, *Ex parte*

*Whitehead*, Vol. XIX. 557. 1 *Mer.* 10, 127, 724; ) but the actual value at the bankruptcy, with reference to the grantee's age and improved health, the price paid, and the enjoyment, as evidence of the value, not simply reducing it by the payments made: the contract involving a contingent risk with reference to the grantee's health; which might have turned entirely against him.

*Ex parte Thistlewood.* - - - - -

XIX. :

4. Originally under proof in bankruptcy upon the penalty of a bond, securing an annuity, forfeited, the annuity itself was received, if assets sufficient. The modern course to prove the value of the annuity as a debt, for convenience of distribution. - - - - -

XIX. :

5. Valuation of annuities, in the distribution of assets, subject to abatement as legacies. - - - - -

XIX. :

6. Ground of the ordinary practice in valuing an annuity, for the purpose of the distribution of assets or paying the legacy duty. - - - - -

XIX. :

7. Stipulated price for redemption of an annuity not the criterion of the value, to be proved in bankruptcy. -

XIX. :

See *Apportionment* 3. *Assets* 17. 24. *Bankrupt* (*Stock* 1.) (*Proof* 9.) *Baron and Feme* (*Separate Property* 23.) *Charge* 12. *Fraud*, 27. 49. *Insurable Interest* 1. *Interest* 4. *Laches* 20. *Legacy* 31. 32. 33. *Principal and Surety* 22. *Purchaser* 40. *Registry* 5. (*Ship* 1.)

### ANNUITY ACTS.

See *Mortgage* 50. *Registry* (*Ship* 6.) *Vendor and Vendee* 18.

### ANSWER.

1. Administrator's belief of the debt.
2. General denial.
3. Insufficient.
4. Must give a full account.
5. In what cases produced on a trial.
6. Evasive a contempt.
7. Without oath or signature under general power to defend.
8. Separate, by wife on amendment after joint answer with husband, abroad.
9. Full, compelled after answer; though defendant might have objected.
10. Misnaming plaintiff taken off the file.
11. Re-sworn on mere mistake of the name.
12. Giving part of the discovery, the rest compelled.
13. Refusing discovery. Argumentative, not positive.
14. Refusing discovery.
15. Relevant not scandalous.
16. To discovery only, when used as evidence, the whole read.
17. To relief, and replied to, admissions must be read to completion of the subject.



18. Reference for impertinence cause against dissolving injunction.
19. Farther explanatory by leave.
20. Supplemental, permitted with caution.
21. Without oath or attestation of honor.
22. Supplemental.
1. The answer of an administrator to a creditor's bill, stating, that he believes the debt is due, whether that is sufficient foundation for a decree, *quære*. *Hill v. Binney*. VI. 738
2. General denial not enough: there must be an answer to the sifting inquiries upon the general question. VI. 792
3. An insufficient answer is no answer. VIII. 88
4. In a suit for an account an answer, going no farther than to enable the plaintiff to go into the Master's office, is not sufficient. He is entitled to the fullest information the defendants can give by the answer; not by long schedules, in an oppressive manner, but giving the best account they can; stating, that it is so; referring to books, &c. so as to make them part of the answer; and giving the fullest opportunity of inspection. *White v. Williams*. VIII. 193
5. Where an answer is required as evidence upon a trial, the Court, except in a criminal case, does not permit the record itself to go, but an office copy; unless proof of the signature is necessary. Not granted, where the action is by a stranger, unconnected with the suit in equity. *Jervis v. White*. VIII. 313
6. An answer clearly evasive upon the face of it, and no reason assigned, to be considered in future a contempt. *Thomas v. Lethbridge*. IX. 463
7. Answer of a defendant abroad, (not required to be on oath) ordered to be put in by a person, having a general power of attorney to defend suits, &c. without signature. *Bayley v. De Walkiers*. X. 441
8. After a joint answer by husband and wife, and amendment of the bill, the husband going abroad, the wife, being the material party, cannot be brought into contempt without a previous order upon her to answer separately. Order accordingly for a subpoena to her alone. *Tarleton v. Dyer*. X. 443
9. Defendant, though perhaps he might have objected to answer, having answered, compelled to make a full disclosure by production of letters mentioned in a schedule to the answer. *Taylor v. Milner*. XI. 41
10. Answer, misnaming the plaintiff, to be considered as no answer: the defendant therefore not bound by it; and, a proper answer being put in, the former ordered to be taken off the file by the description of a paper-writing, purporting to be an answer. *Griffiths v. Wood*. XI. 62
11. Answer taken off the file and re-sworn, where there is a mere mistake of the name. XI. 63



12. Whether a defendant can by answer refuse the discovery, insisting, that he is not bound to answer, *quære* (a); but, having giving part of the discovery, he was compelled to answer as to the rest. *Dolder v. Lord Huntingfield.* - - - - - **XI.**
13. Whether a defendant can by answer refuse the discovery, insisting that he is not bound to answer, *quære.* The answer held insufficient; as being argumentative, and not containing positive averment. *Faulder v. Stuart.* - **XI.**
14. Whether a defendant can by answer refuse the discovery, insisting that he is not bound to answer, *quære.* *Shaw v. Ching.* - - - - - **XI.**
15. Matter in an answer, relevant, according to the case made by the bill, not scandalous; whatever may be the nature of it. *Lord St. John v. Lady St. John.* - **XI.**
16. Where the answer to a bill of discovery only is used as evidence, the whole must be read. *Lady Ormond v. Hutchinson.* - - - - - **XIII.**
17. Where relief is prayed, and the answer replied to, the plaintiff reading admissions, must proceed to the completion of the immediate subject to which the defendant is answering, according to the course of evidence at law: but this does not apply to distinct matter. *Lady Ormond v. Hutchinson.* - - - - - **XIII.**
18. Motion to refer the answer for impertinence allowed as cause against dissolving an injunction, upon the terms of procuring the report in a week. *Goodinge v. Woodhams.* **XIV.**
19. Farther explanatory answer by leave of the Court. - **XIX.**
20. Supplemental answer, substituted lately for liberty to amend an answer, permitted with great caution; only on some strong ground of justice, as fraud; not on negligence; unless the party was led into it; requiring a precise statement of what is to be put on the record. *Curling v. Marquis of Townshend.* - - - - - **XIX.**
21. Answer without oath or attestation of honor regarded for the purposes of civil justice as if with that sanction. *Curling v. Marquis of Townshend.* - - - - - **XIX.**
22. Ground of the modern practice, permitting a supplemental answer instead of the old practice to amend. - **XIX.**

See *Charge and Discharge* 1. 2. 3. *Contract (Specific Performance* 62.) *Copyright* 6. *Costs* 22. *Decrees (pro confesso* 1.) *Demurrer* 19. *Evidence* 10. 17. 18. 22. 23. 24. 30. 50. 51. *Injunction* 20. 59. 63. *Issue at Law* 2. *Pleading* 23. 24. 25. (*Answer* 1.) *Practice* 12. 13. 50. 66. 67. 82. 87. 90. 104. 108. 109. 120. 145. 147. 151. 154. 164. 165. 175. 177. 195. 199. 200. 215. 223. 224. 227. 242. 245. 248. 249. 261. 272. 273. 283. 284. 314. 328. 330. 346. 347. 350. 359. 361. 367. 375. 379. *Privilege* 1. *Scandal* 1. 11. *Tithe* 3.

(a) Since decided in the negative. See the note, Vol. XI. page 295, 2d edit.

A P P E A L.

1. To the Lords does not stay proceedings.
2. From the Rolls, as to new evidence.
3. }
4. } Does not stay proceedings unless by special order.
5. }
6. }
7. Production of deeds on appeal from dismissal.
8. Foreclosure not suspended : but time given on terms.
9. Guarded against abuse.
10. Decree not suspended without special ground.
11. To the Lords : cases to be printed forthwith.
12. To the Lords signed by counsel.
13. Distinction, whether before or after process for costs.
14. To the Lords limited.
15. Making a different case, taken off the file.
16. Practice against the Order 1725.
17. Not barred by consent to an order under the decree.
18. May state the grounds in the answer.
19. Not lightly refused.
20. Few cases of proceedings staid, unless irreparable mischief.

1. An appeal to the House of Lords, does not stay proceeding in the Court below. *The Warden and Minor Canons of St. Paul's v. Morris.* - - - - IX. 316
2. Whether new evidence can be produced upon an appeal from the Rolls, *quære.* - - - - XI. 593
3. Order of the House of Lords, that proceedings under a decree of a Court of Equity shall not be staid by an appeal, unless by special order upon application to the House, or the Court. *Huguenin v. Baseley.* - - XV. 180
4. Execution of a decree not staid by an appeal without a special order. - - - - XVI. 89
5. Decree, generally, not staid by an appeal. Upon special application, if unsuccessful, costs. *Waldo v. Caley.* - XVI. 206
6. Appeal, generally, does not stay proceedings under a decree. The costs upon application, follow the judgment, if unfavourable. *Willan v. Willan.* - - XVI. 216
7. Plaintiff, appealing from a decree, dismissing the bill, entitled to the usual order for the production and inspection of deeds. *Church v. Barclay.* - - - XVI. 435
8. The Court refused to suspend the execution of a decree, obtained by a mortgagee, until six months after hearing an appeal ; but gave six months on bringing the money into Court, consenting to a receiver, and paying interest and costs, on plaintiff's undertaking to repay, if the decree should be reversed. *Monkhouse v. Corporation of Bedford.* - - - - XVII. 380
9. Abuse of the right of appeal prevented, not only by costs, but also by requiring the signature of counsel. - XVII. 381
10. Decree not suspended by an appeal without a special ground, the subject of discretion. A legacy therefore

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paid out of Court upon security notwithstanding an appeal. <i>Way v. Foy.</i> - - - - -	XVIII.	452
11. Object and effect of the late Order of the House of Lords, requiring the parties to appeals to print their cases forthwith; applying generally to all appeals; to check the abuse of appealing merely for delay and vexation. - - - - -	XVIII.	453
12. Signature of counsel on appeal to the House of Lords equivalent to the certificate on appeal to the Lord Chancellor. - - - - -	XVIII.	453
13. An appeal does not form a ground to stay process for costs, previously commenced, viz. by subpoena. Distinction, where the appeal is before any step taken. <i>Roberts v. Totty.</i> - - - - -	XIX.	446
14. Limit of appeal to the House of Lords. - - - - -	XIX.	468
15. Petition of appeal ordered to be taken off the file with costs; as upon a different case, and introducing a variety of representation, not made in the Court below. <i>Wood v. Griffith.</i> - - - - -	XIX.	550
16. The General Order 1725, limiting the time for appeal to one month, cannot prevail against the practice contrary to it. <i>Wood v. Griffith.</i> - - - - -	XIX.	550
17. Appeal not barred by consent to an order under the decree; but that order ought to be inserted in the petition of appeal. <i>Wood v. Griffith.</i> - - - - -	XIX.	550
18. Petition of appeal may state the grounds in the answer against the decree. - - - - -	XIX.	551
19. The right of appeal not to be lightly refused. - - - - -	XIX.	551
20. Few cases of staying proceedings under a decree pending an appeal, unless upon irreparable mischief. - - - - -	XIX.	551

See *Costs* 20. *Practice* 130. 216. 237. 325. *Re-hearing* 1. 2. 3. *Tenant in Tail* 1.

### APPEALS TO THE LORDS.

See Vol. I. 447.—II. 269. 380. 437. 594. 606.—III. 220. 300. 503. 506. 551. 650. 738.—IV. 343. 719.—V. 71. 164. 266. 508.—VI. 229.—VII. 88.—VIII. 319. 576.—IX. 171. 319.—XI. 656.—XIII. 25. 224. 416. XIV. 301. 608.—XV. 39.—XVI. 158.—XVII. 26. 263.—XVIII. 192.

### APPOINTMENT.

See *Contract* 72. *Copyhold* 17. *Devise* 7. *Dower* 8. *Election* 11. *Evidence* 9. *Implication* 2. *Power. Promotions.* *Revocation* 22. *Vested Interest* 9. *Vesting* 57. 59. *Will* 21. 29. 179. 180.

### APPORTIONMENT.

1. Rent under lease by rector.
2. Land-tax, &c. between tenant for life and remainder.

## APPORTIONMENT.—ARBITRATION.

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| 3. } Annuity.  |           |
| 4. }   |           |
| 5. Interest on bond, though a condition for half-yearly payment.   |           |
| 1. Lease for years by a rector having ceased by his death, the succeeding incumbent received from the lessee a sum of money, as the rent due for the whole year, in the course of which the lessor died. The executor is entitled to an apportionment; and a demurrer to his bill was over-ruled. <i>Hawkins v. Kelly.</i>   | VIII. 308 |
| 2. Land-tax, quit rent, &c. not apportioned as between tenant for life and the remainder. <i>Sutton v. Chaplin.</i>  | X. 66     |
| 3. Annuity, secured by bond, payable quarterly, and by will charged on real estate in aid of the personal estate, ordered to be paid out of a fund in Court half-yearly, at Midsummer and Christmas. The annuitant having died between Lady-day and Midsummer, her representative obtained an order for payment of the quarter to Lady-day. <i>Webb v. Lord Shaftesbury.</i> | XL. 361   |
| 4. Interest by will, in the nature of an annuity, not apportioned in favour of the executor of the tenant for life. <i>Franks v. Noble.</i>  | XII. 484  |
| 5. Apportionment of interest upon a bond, according to the general rule, as accruing <i>de die in diem</i> , not as dividend, or rent not provided for by the statute, is not prevented by the condition, reserving it by equal half-yearly payments. <i>Banner v. Lowe.</i>   | XIII. 135 |
| See <i>Charity</i> 61. <i>Copyhold</i> 17. <i>Executor</i> 11. <i>Land-tax</i> 1. <i>Lease (Renewal.)</i> Will 292.  |           |

### APPORTIONMENT OF A FINE.

See Will 77.

### APPROPRIATION.

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|---|----------|
| 1. Not by remittance of certificate of payment into the Company's treasury in <i>India</i> and a Navy Bill indorsed.  |          |
| 1. Certificates of the <i>East India</i> Company, on payment into their treasury in <i>India</i> , and a Navy Bill, remitted indorsed by the testator to his agent in <i>England</i> , being at the time a creditor, if they did not pass at law by the indorsement, were, after the death of both parties, the agent having become bankrupt, held not to pass in equity: the inference from the absence of evidence of a specific appropriation being against the assignees; who had obtained possession of all letters, &c. <i>Williamson v. Thomson.</i> | XVI. 413 |
| See Will 181.   |          |

### ARBITRATION.

1. Arbitrator distinguished from agent.
2. Parties bound.

- 3. Distinction between general and special, as to facts.
- 4. Exceptions to award.
- 5. Impeachable for what.
- 6. Impeachable as contrary to law.
- 7. Not impeached for allowing compound interest.
- 8. Instead of reference to the Master.
- 9. General : not as to the Master.
- 10. Instead of reference to the Master.
- 11. Exceptions to award.
- 12. Devests jurisdiction on facts.
- 13. Discovery in aid of action notwithstanding a clause for arbitration.
- 14. Covenant for no bar to suit.
- 15. Agreement to refer cannot take away jurisdiction.
- 16. Plea of award examined.
- 17. Award in a cause not within the statute.
- 18. Discretion on award made a rule of a Court of law.
- 19. Award on judgment of another.
- 20. Submission made a rule of Court after award.
- 21. Contrary to stipulation not made by the Court.
- 22. Misconduct with acquiescence.
- 23. Execution of arbitrator's authority.
- 24. Plea of agreement to refer over-ruled.
- 25. No specific performance of agreement to refer.
- 26. Equity not ancillary to.
- 27. Agreement to refer does not bar an action.
- 28. Rule of Court after award. Award prepared by the solicitor of party.
- 29. Power to proceed *ex parte*.
- 30. Agreement to refer no bar in equity.
- 31. Distinction where under the statute, or in a cause.
- 32. Contrary to stipulation not made by the Court.
- 33. Parol submission.
- 34. Award not requiring a deed-stamp.

- 1. Arbitrator is not to consider himself agent for the person, who appoints him. - - - - -
- 2. Parties to an award bound by it. *Price v. Williams.* - - - - -
- 3. Arbitrator on general reference of all matters, &c. may go farther than the Court could, to do complete justice ; and may therefore relieve against a harsh right, which in a Court of justice would prevail : a party may impeach the award for corruption or gross mistake, not for erroneous judgment ; in case of mistake the arbitrator must be convinced of it, and that he acted upon it. But arbitrator on reference to inquire into facts, &c. is as a Master ; and the Court will draw the conclusion ; or, if he has, will see that it is right. *Knox v. Symmonds.* - - - - -
- 4. Exceptions may with leave of the Court be taken to an award upon reference to inquire into facts ; if allowed, the Court will refer it to a Master, but not back to the arbitrator without consent. - - - - -

I.  
I.

I.

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5. Award under a general reference cannot be impeached for erroneous judgment upon facts; but may for corruption, misbehaviour, excess of power, and mistake admitted by the arbitrators: in the three first cases there must be satisfactory evidence against them; for the Court favours awards. *Morgan v. Mather.* - II. 15
6. Award contrary to law may be impeached; for that is excess of power (a). *Morgan v. Mather.* - - - II. 15
7. Award not to be impeached for allowing compound interest; for it may be allowed in case of a contract for it, either express or to be inferred from the nature of the dealings between the parties; as if it is according to the course of their trade; therefore it is a conclusion of fact, on which the judgment of the arbitrator is final: but this doctrine as to interest has no relation to mortgages. *Morgan v. Mather.* - - - - II. 15
8. Parties may, if they please, take arbitrators instead of a Master. - - - - - II. 22
9. Accounts referred to the Master: afterwards an order of reference was made to arbitrators to take an account of all dealings and transactions in like manner as if the same were referred to the Master, and that the parties should be concluded and bound by the award, and should observe it; and farther directions were reserved: this reference is not in nature of a reference to the Master; therefore the parties are bound by a general award of a balance due without particulars stated; the decision being final, because upon matter of fact, and no corruption or misconduct imputed; and the Court will not require particulars merely as a ground for costs. *Dick v. Milligan.* - - - - - II. 23
10. Parties may, if they choose, take arbitrators instead of the Master; and then they must proceed as the Master, and make the same report. *Dick v. Milligan.* - - - II. 23
11. Matter of exception to an award must be confined to what arises upon the face of it, compared with the proceedings in the cause; and cannot be introduced by affidavit: any thing *dehors*, charging misconduct, &c., must come upon motion to set it aside; and there cannot be a partial inquiry. *Dick v. Milligan.* - - - II. 24
12. By reference to arbitration both at law and equity the Court divests itself of all judgment upon the facts. - II. 24
13. Bill of discovery in aid of an action of covenant: plea, a clause in the articles that any dispute should be referred: plea over-ruled; discovery being of course, while an action is brought, and can be maintained. *Mitchell v. Harris.* - - - - - II. 129
14. Covenant to refer to arbitration only entitles to damages; but is no bar to a suit or action; as covenant, that there should be no suit at law or in equity, would be. - II. 132

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(a) See the note, Vol. II. page 18.

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| 15. Mere agreement to refer to arbitration, where no reference has taken place, cannot take away the jurisdiction of any Court. - - - - -   | Vol<br>I |
| 16. Award pleaded would be examined in a Court of Law as well as Equity. - - - - -  | I        |
| 17. Any award in a cause depending is not within the statute. <i>Lord Lonsdale v. Littledale.</i> - - - - -   | I        |
| 18. Upon an award made a rule of a Court of Law, one term being, that no bill in equity shall be filed, the Court of Law has a discretion to enforce that term, or not. - - - - -   | I        |
| 19. Award not to be set aside, because the arbitrator made use of the judgment of another person. - - - - -   | V        |
| 20. Order after an award to make the submission a rule of Court. <i>Pownall v. King.</i> - - - - -  | V        |
| 21. Upon a reference to arbitration, if the award is not made in the time and manner stipulated, no case at law or in equity, that the Court has substituted itself for the arbitrators, and made the award; even where the substantial thing to be done is agreed between the parties: still less, where any thing substantial is to be settled by the arbitrators. - - - - -  | V        |
| 22. Award set aside: the arbitrator having received evidence after notice to the parties, that he would receive no more; in which they acquiesced. <i>Walker v. Frobisher.</i> - - - - -  | V        |
| 23. Under a reference to settle the matter in difference, and award such alterations in the defendant's works as to the arbitrator should seem necessary, regard being had to their state at a particular period, an award directing no other alteration than that parts of the machinery, which were made of wood, should be made of cast iron, was held a due execution of the authority. <i>Walker v. Frobisher.</i> - - - - - | V        |
| 24. To a bill for discovery and relief plea of an agreement to refer to arbitration over-ruled. <i>Street v. Rigby.</i> - - - - -   | V        |
| 25. Bill for specific performance of an agreement to refer to arbitration does not lie. - - - - -   | V        |
| 26. Courts of equity will not be ancillary to arbitrators by permitting the party to take relief from them, coming to the Court for discovery. - - - - -  | V        |
| 27. Agreement to refer to arbitration does not bar an action. - - - - -   | V        |
| 28. No objection to an award, that the reference was not made a rule of Court till after the award; or, that the award was prepared by the solicitor of one of the parties. <i>Fetherstone v. Cooper.</i> - - - - -   | I        |
| 29. Arbitrator has a power, subject to his discretion, to proceed <i>ex parte</i> , if one of the parties will not attend. <i>Wood v. Leake.</i> - - - - -  | XI       |
| 30. Agreement to refer to arbitration no bar to relief in equity. - - - - -   | XI       |
| 31. Distinction between an award under the statute 9 & 10 Will. 3. c. 15. and an award made in the course of a cause. - - - - -   | XI       |



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| <p>32. No case at law or in equity, that if an award is not made at the time and in the manner stipulated, the Court have substituted themselves for the arbitrators; and made the award; even where the substantial thing to be done was agreed by the parties; but the time and manner left to others to prescribe. - - - - -</p> <p>33. Parol submission to arbitration not within the statute 9 &amp; 10 Will. &amp; Mary, c. 15. — v. <i>Mills</i>. - - - - -</p> <p>34. Objection to an award, to be ready to be delivered in writing, to the parties by a certain day, as not having a deed-stamp, over-ruled. - - - - -</p> | <p>XVII. 242</p> <p>XVII. 419</p> <p>XVII. 232</p> |
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### FRAUD.—JURISDICTION.—MISTAKE.

FRAUD.—1. Costs against arbitrator combining.

- |  |         |
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| 1. Arbitrator combining shall pay costs. - - - - - | II. 453 |
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JURISDICTION.—1. Of equity on fraud.

2. Under general reference on admission of assets by mistake.

3.

4. { Of equity, where made an Order of Court  
5. { of Law.

6.

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| <p>1. Bill lies to set aside for fraud an award made a rule of a Court of Law, under 9 &amp; 10 Will. 3. c. 12. <i>Lord Lonsdale v. Littledale</i>. - - - - -</p> <p>2. Admission of assets by mistake a clear subject of the jurisdiction of an arbitrator under a general reference. <i>Young v. Walter</i>. - - - - -</p> <p>3. Objections to an award being such as might have been equally the subject of jurisdiction in the Court of Law, where the reference was made a rule of court. Injunction dissolved. <i>Fetherstone v. Cooper</i>. - - - - -</p> <p>4. General reference to arbitration by parties in a suit, then depending in Chancery, made an order of a Court of Law. Whether that is an order within the statute 9 &amp; 10 Will. 3. c. 15, excluding the equitable jurisdiction to affect the award for mistake of the law, apparent, and to restrain an application to the Court of Law to enforce it, <i>quære?</i> <i>Nichols v. Chalie</i>. - - - - -</p> <p>5. No jurisdiction in equity by injunction to stay process of a Court of Law upon an award, made a rule of court under the statute 9 &amp; 10 Will. 3. c. 15, which confines the jurisdiction to set aside the award, obtained by corruption, &amp;c. to the Court, of which the submission is made a rule. <i>Gwinett v. Bannister</i>. - - - - -</p> <p>6. As to the jurisdiction in equity against an award under a reference made a rule of a Court of Law, for misconduct of the arbitrators, &amp;c. where the bill was filed before the rule made in the Court of Law, <i>quære?</i> — v. <i>Mills</i>. - - - - -</p> | <p>II. 451</p> <p>IX. 364</p> <p>IX. 67</p> <p>XIV. 265</p> <p>XIV. 530</p> <p>XVII. 419</p> |
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MISTAKE.—1. } Of law.  
2. }

3. Requires clear evidence, and affidavit by the arbitrator.

1. An award cannot be disturbed for mistake upon a question of law referred. *Ching v. Ching.* - - -

VI.

2. Though, if an arbitrator, under a general reference, meaning to decide according to law, mistakes, the Court will set that right, yet, if the parties choose to refer matters of law, meaning to have the judgment of the arbitrator upon them, instead of that of the Court, the award, though not agreeable to law, cannot be therefore impeached. *Young v. Walter.* - - -

IX.

3. Declaration of one of the arbitrators, that, had he seen a letter, of which, being mislaid at the time, the contents were proved, he would have acted otherwise, not sufficient against an award on the ground of mistake admitted by the arbitrators; of which there ought to be clear, distinct, evidence, and an affidavit by the arbitrators, to induce a Court of Equity to set aside the award, or a Court of Law to refuse to make it a rule of court. *Anderson v. D'Arcy.* - - -

XVIII.

See *Accident* 1. *Baron and Feme* 62. *Contract* 31. 34. 94. (*Specific Performance* 3. 50. 51. 52. 64. 65.) *Fraud* 11. *Party* 16. *Practice* 34. *Privilege* (*Arrest* 1.) *Theatre* 2.

## ARCHITECTURE.

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## ARTICLES.

1. Settlement, copying the words of articles before marriage, giving husband an estate tail, reformed.

2. Construction.

3. Not executed by strict settlement, where both parents must concur to bar.

1. Articles before marriage to settle were so expressed, that the husband would have had an estate tail: a settlement, copying the very words of the articles, was reformed. - - -

V.

2. Articles of marriage to settle estates of the husband and wife of equal value in strict settlement, and providing

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portions: the wife's estate being withdrawn by decree on the ground of infancy, the younger children were confined, as against the eldest, to half the portion: the articles providing in the event of no issue male, in which case the estates were to separate, that each should bear a moiety: though they also contemplated the case of the wife's refusal to be bound; providing against it by the forfeiture of her interest. *Clough v. Clough.* - - - - -

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3. The rule, that a limitation to the heirs of the body in articles shall be carried into execution by a strict settlement, does not prevail, where the concurrence of both parents would be necessary to bar the intail. - - -

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*See Construction 5. Contract. Deed 3. Executory Trust 1. 2. 3. Settlement 8. 9. Trust (Executory 1.) Voluntary Settlement 12. 17.*

## ARTICLES OF SEPARATION.

*See Baron and Feme (Separation 4. 8.)*

## ASSETS.

1. Lease; though a proviso against alienation.
2. The object of suit in equity. Distinction at law.
3. Orphanage share under custom of *London*.
4. }
5. } Exoneration of the personal estate.
6. }
7. }
8. Exoneration of descended estate.
9. Distributed by the law of the domicile.
10. }
11. } Exoneration of the personal estate.
12. Equitable.
13. Implied charge of debts and legacies on real estate.
14. Devise "after payment of debts," a charge.
15. Distinction between debts and legacies in implied charge on estate devised.
16. Equitable.
17. On deficiency annuity valued.
18. Debt at law the foundation of administration in equity.
19. Exoneration of the personal estate.
20. }
21. } Equitable.
22. Sale of real estate on deficiency of personal foreseen.
23. Advancement brought into hotchpot.
24. Commission in the army an advancement, to be brought into hotchpot. So an annuity; how.
25. No claim of widow on what is brought into hotchpot.
26. Order of application.
27. Assigned by executor for his own debt.
28. Order of application.
29. Exoneration of descended estate, though legal, and that devised equitable, assets.

30. Exoneration of personal estate.  
 31. Exoneration of descended estate.

32. }  
 33. }  
 34. } Conversion of.  
 35. }  
 36. }  
 37. }  
 38. }

39. Equitable.  
 40. Sale of real estate before the state of the personal ascertained.  
 41. Under decree obtained by separate creditor, the surviving partner a bankrupt, and the joint estate insolvent, the joint creditors entitled only to the surplus of the separate estate.  
 42. Power of appointment executed for volunteers. Distinction as to a purchaser.  
 43. Remittance for a specific purpose not general assets.  
 44. Sale of real estate without waiting the account of the personal.  
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 46. Personal estate generally considered in possession a year after the death.  
 47. Presumption, that the personal estate may be got in within a year.  
 48. Of testator in *India*: how the rule for conversion into 3 per cents. is applied.  
 49. Leases for lives, when distributed as personal estate.

1. Executors may dispose of a lease for years as assets notwithstanding a proviso or covenant, that lessee shall not alien. *Seers v. Hind.* - - - - -
2. At law the person often sued in respect of the assets: in equity the assets themselves. - - - - -
3. Orphanage share under the custom of *London* is subject to debts. - - - - -
4. Devise in trust to sell for payment of debts and funeral expenses, with a particular disposition of the surplus money: the personal estate, not being otherwise disposed of than by the appointment of an executor, who was not one of the trustees, is first liable to the debts, &c. especially as the produce of the sale was not sufficient for them. *Gray v. Minnethorpe.* - - - - -
5. Under a devise to sell and pay funeral expenses the personal estate was exempted without any express words upon the evident intention. *Burton v. Knowlton.* - - - - -
6. Where there is an express direction in a will, that the debts, &c. shall be paid out of the real estate, the person, to whom the personal is bequeathed, takes it exempt. - - - - -
7. To exempt the personal estate under a devise for payment of debts the intention must appear plainly on the

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- will: and the Court cannot look to extrinsic circumstances. *Brummel v. Prothero*. - - - - - III. 111
8. Though a general charge of debts upon a devised estate will not prevent the previous application of an estate descended, yet if the devised estate is selected and appropriated to the debts, it is liable before the estate descended: but this arrangement does not bind the creditors. *Manning v. Spooner*. - - - - - III. 114
9. The personal property of an intestate, wherever situated, must be distributed by the law of the country, where his domicile was; which is *prima facie* the place of his residence; but that may be rebutted and supported by circumstances. *Bempde v. Johnstone*. - - - - - III. 198
10. Personal estate not exempted from debts, &c. by a charge upon real. *Burnaby v. Griffin*. - - - - - III. 266
11. To exempt personal estate from debts the intention must be manifest. - - - - - III. 477
12. Real estates devised held liable to simple-contract debts under a direction in the beginning of the will, that debts and funeral expenses should be first paid: that, which descended to the heir by the failure of the devise, to be first applied. *Williams v. Chitty*. - - - - - III. 545
13. No difference between debts and legacies in an implied charge upon real estate by will. - - - - - III. 551
14. Devise after payment of debts: the debts are charged. *Shallcross v. Finden*. - - - - - III. 738
15. Distinction between debts and legacies in an implied charge upon an estate specifically devised. - - - - - III. 739
16. An equity of redemption of a mortgage in fee is not equitable assets; at least, as against judgment creditors; who have a right to redeem. *Sharpe v. The Earl of Scarborough*. - - - - - IV. 538
17. Upon a deficiency of assets, administered in this Court, a value must be set upon an annuity at the time of the death; and the annuitant can claim only in respect of that. *Franks v. Cooper*. - - - - - IV. 763
18. Upon the administration of assets no question ought to be determined in equity, till it is first determined, whether there is a good debt at law. - - - - - IV. 815
19. The personal estate is the natural fund for the debts, and can only be exempted by the intention to exempt it, expressed in the will: a charge upon a real estate, however anxious, is not of itself sufficient. *Tait v. Lord Northwick*. - - - - - IV. 816
20. A charge for payment of debts makes equitable assets. *Bailey v. Ekins*. - - - - - VII. 319
21. Simple-contract debts not charged upon real estate by a will, first devising, that all his debts and funeral expenses might be satisfied and paid by his executors; all the real estate being specifically devised. Assets

- |     |   |              |
|-----|---|--------------|
|     | marshalled, but no sale decreed, until the infant devisee attains twenty-one (a). <i>Powell v. Robins.</i> - - -  | Vol.<br>VII. |
| 22. | The old practice, to administer the personal estate before a sale of real estate charged in aid, relaxed. Now if the Master foresees a deficiency, a sale is permitted. -   | VIII.        |
| 23. | Advancement to the eldest son, if personal property, must be brought into hotchpot under the Statute of Distributions. <i>Lord Kircudbright v. Lady Kircudbright.</i>   | VIII.        |
| 24. | The purchase of a commission in the army is an advancement, to be brought into hotchpot. An annuity is an advancement, to be brought into hotchpot, viz. the value at the date of the grant; or if it has ceased, the payments received; at the option of the child. <i>Lord Kircudbright v. Lady Kircudbright.</i> - - -   | VIII.        |
| 25. | The widow has no claim upon what is brought into hotchpot among the children. <i>Lord Kircudbright v. Lady Kircudbright.</i> - - - - -  | VIII.        |
| 26. | In the administration of assets ordinarily the first fund applicable is the personal estate, not specifically bequeathed: then land devised or ordered to be sold for payment of debts; not merely charged: then descended estates: then lands charged with the debts. The distinction is between a mere charge upon the real estates, and proposing the mode, in which the debts are to be paid. - - - - - | VIII. 12     |
| 27. | Leasehold estates specifically bequeathed to an executor were by him assigned as a security for his own debt. That assignment, no collusion appearing, was established against a creditor. <i>Taylor v. Hawkins.</i> - - -  | VIII.        |
| 28. | Rule as to the application of assets. Where the will, going beyond a mere charge, creates a particular fund for payment of debts, that shall be first applied in exoneration of descended estates, whether acquired after the date of the will, or not, and of the personal estate; even in favour of the next of kin, taking it for want of disposition. <i>Milnes v. Slater.</i> - - - - -                | VIII.        |
| 29. | The rule as to the exoneration of estates descended by a devise for the payment of debts holds, even though the estate devised may be equitable assets, and the descended estates legal assets. - - - - -   | VIII.        |
| 30. | The personal estate can be exempt from the debts only by declaration plain, or necessary inference. - - -   | VIII.        |
| 31. | A mere charge upon a devised estate will not protect a descended estate from being first applied. - - -   | VIII.        |
| 32. | General residuary bequest, including a leasehold farm, with the stock, to be converted into money as soon as conveniently may be, upon trust to pay the interest, &c. for life, and as to the capital for the children. The stock being considerably increased between the death  |              |

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(a) See the note, page 211.

in *April* and the sale at *Michaelmas*, it was decreed, that the conversion was in a reasonable time; and the party entitled for life should have interest from the conversion; and as to the premises, that from a defect of title could not be sold, that, being for the interest of all, that they should not be sold, a value should be set upon them; to carry interest at 4 *per cent.* from the death. *Gibson v. Bott.* - - - - -

VII. 89

33. General rule, that where personal property is bequeathed for life with remainders over, and not specifically, it is to be converted into the 3 *per cents.*, subject in the case of a real security to an inquiry, whether it will be for the benefit of all parties; and the tenant for life is entitled only upon that principle. *Howe v. Earl of Dartmouth.* - - - - -

VII. 137

34. The Court in laying out money in the funds, does not attend to the difference in the price of stock. - - -

VII. 551

35. To convert real into personal property, as between real or personal representatives, from the state in which it is found at the death, the character of land or money must, by the trust, covenant, &c. be imperatively and definitively affixed to it: otherwise, if there was an option, there is no equity. The bill by the heir claiming the personal property, as real estate, was dismissed without costs. The decree affirmed on a re-hearing: the money, not being impressed with a real character, and clothed with real uses, immediately upon the execution of the deed, was, in the event that happened, not considered as land. *Wheldale v. Partridge.* V. 388.

VIII. 227

36. Money being once clearly impressed with real uses, and one of those uses being for the benefit of the heir, the impression will remain for his benefit; and to put an end to it, in a question between the heir and executor, either the money must come to the possession of the person from whom they claim in those characters, or, he must, if it is in the hands of a third person, do some act denoting a change of intention. - - - - -

VIII. 235

37. Direction by will to sell real estates, and after the sale to pay certain legacies, held, upon the will, not a conversion out and out; and the surplus produce does not pass by an unattested codicil. *Sheddon v. Goodrich.* - - -

VIII. 481

38. Surplus produce of real estate, converted by will, held to pass only where the will, attested by three witnesses, itself treats the surplus as comprehended in the description under the words "my personal estate;" and an intention is collected from the whole will to give that surplus, after payment of the debts and legacies, in terms *prima facie* descriptive of personal property only, but upon the whole intended to pass such surplus. - - - - -

VIII. 495

39. A charge makes equitable assets. *Shiphard v. Lutwidge.*

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| 40. Practice of this Court for convenience to sell property, which it may afterwards appear unnecessary to sell; as real estate, before the situation of the personal property is ascertained: the Court afterwards setting right the interests. - - - - -  | IX.    |
| 41. Under a decree obtained by a separate creditor for satisfaction out of assets, the surviving partner a bankrupt, and the joint estate insolvent, the joint creditors not entitled <i>pari passu</i> with the separate creditors to the separate estate; but can only claim the surplus after satisfaction of the separate debts. <i>Gray v. Chiswell.</i> -   | IX.    |
| 42. Power of appointment over a sum of money, to be raised under a trust term, executed in favour of volunteers, is assets for creditors. But the equity of a purchaser from a party, taking under a voluntary deed of appointment, was preferred to that of general creditors, having no specific charge. <i>George v. Milbanke.</i> - - -   | IX.    |
| 43. A remittance in bills and notes, for a specific purpose, viz. to answer acceptances, received by the administrator in consequence of the death of the party, to whom it was remitted, held not general assets: the special purpose operating a lien; which would also be the effect upon a bankruptcy. <i>Hassall v. Smithers.</i> - - -  | XII.   |
| 44. Sale of real estate decreed provisionally, without waiting the account of the personal estate, previously applicable.   | XII.   |
| 45. Real estate, to be converted into personal for special purposes, not personal property to all intents: so as to let in creditors by simple contract. <i>Gibbs v. Ougier.</i> -  | XII.   |
| 46. General rule, for convenience, considering the personal estate to be reduced into possession a year from the death of the testator; and therefore interest upon legacies from that period, unless some other is fixed by the will; though actual payment within that time may in many instances be impracticable. - - - - -   | XIII.  |
| 47. Reference by the will to the time, when the personal estate shall be got in, does not without the most plain, distinct, intention, affect the legal presumption, that it may be got in within a year. - - - - -   | XIII.  |
| 48. The general rule for the conversion of personal property, bequeathed for life, with remainders over into the 3 <i>per cents.</i> , held not to attach upon property of a testator, who died in <i>India</i> , under his will, made there, invested by his executor in the Company's securities there; but on the arrival of the parties in this country, a decree was made, that it should be remitted, and invested accordingly. <i>Holland v. Hughes.</i> - - - - - | XVI.   |
| 49. Leases for lives distributable as personal estate, when there is no special occupant, or where the executor is the special occupant. - - - - -  | XVIII. |



- MARSHALLING.**—1. Not against judgment creditors.  
 2. For legatee by codicil after devise subject to legacies by the will.  
 3. Not for legatees under direction to pay the debts as soon as conveniently may be.  
 4. The general case.

1. Assets are not marshalled against judgment creditors. *Sharpe v. The Earl of Scarborough.* - - -

IV. 538

2. Testator after giving an annuity and legacies devised her real estate, subject to the said annuity and legacies and her debts and funeral and testamentary expenses and the debts of her late brother. The assets were marshalled in favour of a legatee by a codicil. *Norman v. Morrell.* - - -

IV. 769

3. The personal estate being amply sufficient for the debts, though not equal to the discharge of the legacies in full, and the real estate being devised, the Court would not under a direction to the executors to pay the debts and funeral expenses as soon as conveniently may be, marshal the assets in favour of the legatees. *Keeling v. Brown.* - - -

V. 359

4. Assets marshalled. *Bonner v. Bonner.* - - -

XIII. 379

See *Ademption* 2. *Annuity* (Valuation 5. 6.) *Bankrupt* (Dividend 2.) *Baron and Feme* (Separate Property 41.) *Bond* 4. *Estate*. (Conversion). *Executor* 9. 12. 26. 61. 62. 78. 74. *Exoneration* 1. 26. *Legacy* 5. *Maintenance* 16. *Marshalling*. *Partner* 13. *Power* 12. *Representative*. *Revocation* 2. *Trust* (Resulting 6.) *Vendor and Vendee* 4. *Will*. 8. 42. 92. 93. 94. 128. 132. 157. 197.

## ASSIGNEE.

See *Annuity* (Memorial 6.) *Assignment*. *Bankrupt*. *Baron and Feme* 34. 36. *Landlord and Tenant* 13. *Mortgage* 13. 15. 19. *Partner* 9. *Trust* 82.

## ASSIGNMENT.

1. For value and by law distinguished.  
 2. For value: whether liable to a provision for wife out of her fortune.  
 1. Distinction between a particular assignment for valuable consideration and an assignment by operation of law; as in bankruptcy. - - -  
 2. Whether a particular assignee for a specific consideration is liable to make a provision for the wife out of her fortune, as assignees in bankruptcy are, *quære.* -

IX. 97

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**EQUITABLE INTEREST.**—1. Assignment of rights in account not to be divided.

1. The Court has perhaps gone too far in permitting assignments of rights in accounts to be taken. Such a



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right cannot be parcelled out; so that every person  
may file a bill. - - - - -

See *Insolvent Act* 1.

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**ASSIGNMENT, FRAUDULENT.**

See *Bankrupt (Act of Bankruptcy 16.) Creditor and  
Debtor 8. Lien 1. 2. Practice (Party 6.) Release 1.  
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**ASSIGNMENT OF OFFICE.**

See *Register's Office* 1.

**ASSIGNMENT, RESTRAINT OF.**

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**ASSISTANCE, WRIT OF.**

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**ASSUMPSIT.**

1. Delivery necessary.

1. Conveyance or delivery necessary to support general  
*indebitatus assumpsit.* - - - - -

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**ASSURANCE COMPANY.**

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**ATTACHMENT.**

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**ATTACHMENT, FOREIGN.**

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**ATTAINER.**

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**ATTAINT.**

1. Person attainted charged in execution.

1. A person attainted may be charged in execution. - - -

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See *Will (Witness.)*

**ATTORNEY, POWER OF.**

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**ATTORNEY AND CLIENT.**

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tract 83. Fraud. Guardian and Ward 5. Mortgage 33.*

**ATTORNEY AND SOLICITOR.**

1. } Not compelled to produce client's papers.
2. }
3. Solicitor not struck off at his own request without affi-  
davit of no other reason.
4. Solicitor on the general jurisdiction ordered to deliver  
his bill for the purpose of getting title-deeds.

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| 5. Solicitors modern, compared with Clerks in Court.  |          |
| 6. Solicitor, suing for his bill need not state the requisites by the statute.  |          |
| 7. Not struck off at his own request without affidavit of no other reason.  |          |
| 1. Motion to compel an attorney to produce papers of his client refused with costs. <i>Wright v. Mayer.</i> - -   | VI. 280  |
| 2. No <i>subpœna duces tecum</i> upon an attorney to produce papers of his client. It has been sometimes seen in a criminal case; but is not to be followed. - - -  | VI. 282  |
| 3. The Court will not strike a solicitor off the Roll at his own request without an affidavit, that there is no other reason for the application. <i>Ex parte Owen.</i> - -   | VI. 11   |
| 4. Order, without a cause in Court, upon the general jurisdiction over a solicitor, that he shall deliver his bill; for the purpose of getting from him the title-deeds, deposited with him for suffering recoveries, &c. <i>Ex parte The Earl of Uxbridge.</i> - - - - | VI. 425  |
| 5. Solicitors modern officers of the Court, compared with Clerks in Court. - - - - -  | VI. 687  |
| 6. A solicitor, suing for his bill, need not state all the circumstances required by the statute 2 Geo. 2. c. 23. s. 22; being matter of evidence. - - - -  | VIII. 9  |
| 7. A solicitor not to be struck off the Roll at his own request without an affidavit, that there is no other reason for the application. <i>Ex parte Foley.</i> - - - -   | VIII. 33 |

### ATTORNEY AND CLIENT.—CLERK.—LIEN.— PRIVILEGE.

- ATTORNEY AND CLIENT.**—1. Relief against securities for a present and the balance.
2. } Relief against a gift.
3. }
4. Change of attorney.
5. Costs.
6. Bill settled and paid not taxed of course without fraud.
7. Attorney may be discharged.
8. Attorney, quitting before trial, cannot bring an action for his bill.
9. Commission of bankruptcy on bill untaxed.
10. Solicitor refusing to appear at the hearing.
11. Change of attorney: as to relinquishing, taking security, and notice not to pay without satisfying his costs.
12. Relief against beneficial contracts and purchases obtained by attorney. Confirmation.

- ATTORNEY AND CLIENT.—13. Attorney cannot take any thing but his demand pending the suit.  
14. Purchase by attorney from client established.  
15. Principle of relief.  
16. Purchase from client at under-value, &c.  
17. No gift, &c., while the connection subsists.  
18. Attorney, drawing the will, a residuary devisee.  
19. Attorney cannot give up and oppose his client.  
20. Attorney cannot communicate his client's secrets.  
21. } Client's right against partners.  
22. }

1. Securities taken by an attorney from his client during the time of their connection as such for a present, the balances of accounts settled for money lent and laid out, costs, and business done, and the price of a horse sold, void as to the present; and, the plaintiff submitting to pay what should be actually due, the accounts were opened as to the whole: the horse being sold soon after he was purchased from the attorney for a price much less than was then stipulated, inquiry into his value directed. *Newman v. Payne.* - - - - -  
2. Relief against a deed of gift by a client to his attorney.  
3. Independent of fraud an attorney shall not take a gift from his client, while the relation subsists. - - -  
4. At law the party cannot change his attorney without a Judge's order. - - - - -  
5. Solicitor allowed costs of taxation; the reduction of his bill being less than a sixth: charged with costs of proceedings before the Master, creating useless expense. *Yea v. Frere.* - - - - -  
6. An attorney's bill of costs, settled and paid, or after judgment in an action, not to be referred for taxation of course; as it may upon a special case of fraud, or improper charges, notwithstanding payment, a release, judgment, or other security. *Langstaffe v. Taylor.* -  
7. Client may discharge his solicitor. - - - - -  
8. Attorney, quitting his client before trial, cannot bring an action for his bill. - - - - -  
9. Attorney may take out a commission of bankruptcy upon his bill before taxation. - - - - -  
10. Solicitor ordered to pay all the costs, occasioned by his refusing to appear for the defendant at the hearing, pursuant to his undertaking, and the costs of the application. *Cook v. Broomhead.* - - - - -  
11. Attorney cannot be changed without leave of the Court: whether he can relinquish the suit, though not paid, and

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- as to the effect of taking security, *quære*. Effect of his notice to defendant not to pay over money under decree or judgment without satisfying his costs. - XVI. 281
12. Beneficial contracts and conveyances, obtained by an attorney from his client during their relation, as such, and connected with the subject of the suit, being also liable to the charge of *champerty*, decreed to stand as security only for what was actually due; and purchases by the attorney declared a trust. A subsequent deed, not a separate, independent, voluntary transaction, but under the same pressure, and called for under the covenant for farther assurance, no confirmation. *Wood v. Downes*. - XVIII. 120
13. Attorney cannot take any thing from his client for his own benefit, pending the suit, but his demand: nor a guardian from his ward pending the guardianship; nor at its close; nor until the relation and influence have ceased in either case. - XVIII. 127
14. Purchase of a reversionary interest by an attorney from his client, though in the event advantageous, without fraud, or any representation, the proposal coming from the client, and no confidence upon that subject; both ignorant of the value. The bill charging fraud and misrepresentation, confidence and knowledge on one side, with ignorance on the other, and not bringing forward the only incorrect circumstance, the receipt taken as for money paid, though the consideration was by deduction from a bill of costs, not then of that amount, dismissed without costs. *Montesquieu v. Sandys*. - XVIII. 302
15. Principle of relief against transactions between attorney and client, with misrepresentation from knowledge, acquired in the client's transactions, or assumed; considered either as misconduct or negligence. - XVIII. 308
16. Whether a deficiency in value of one-third, with breach of duty as an attorney, &c. is not sufficient to set aside a purchase from his client, *quære*. - XVIII. 312
17. An attorney shall not take a gift or reward from his client, while the connection subsists. It must, as in the instance of guardian and ward, be previously dissolved. XVIII. 313
18. The circumstance, that one residuary devisee was the attorney, who drew the will, not decisive evidence of fraud. *Paine v. Hall*. - XVIII. 475
19. An attorney or solicitor cannot give up his client, and act for the opposite party, in any suits between them. *Earl of Cholmondeley v. Lord Clinton*. - XIX. 261
20. Attorney prevented from communicating his client's secrets even by striking off the roll. Not permitted to give evidence of them. - XIX. 268
21. Solicitors in partnership cannot dissolve their partnership, as against their client, without his consent, so as to

enable the retiring partner, as discharged, to act him.

22. Practice of solicitors, partners, dividing their business, considering one only as agent to the other, discharging the client being entitled to their united exertion.

CLERK.—1. Evidence by a clerk; and where he becomes partner.

1. As to preventing the clerk of an attorney or solicitor from giving evidence of facts come to his knowledge that service, *quære*. Distinction, where he afterwards becomes partner.

LIEN.—1. Subject to the equities of the parties.

2. At law: subject to which plaintiff may discontinue.

3. On papers generally.

4. } Solicitor discharged has his lien; but cannot

5. } stop the cause.

6. Lost by declining to act.

7. Subject to the equities of the parties.

8. As to preventing compromise.

9. On deed deposited for a particular purpose, not permitted to remain.

10. Whether on original will.

1. Solicitor's lien for costs upon a fund of assets appropriated, prevailed; though the appropriation subject to a debt; in respect of which the surety, was creditor of the client to a great amount. The order, establishing the solicitor's lien upon the fund of assets, appropriated to the client, subject to securing a debt, from him, and to satisfy his surety, and afterwards paid by the client, was reversed; as being inconsistent with the decrees. *Taylor v. Popham*.

2. At law lien of an attorney upon papers for costs; but the plaintiff may discontinue his action, and the costs incurred.

3. Lien for costs upon papers in the attorney's possession.

4. A party changing his solicitor, the former solicitor has a lien for his costs upon papers in his hands; and he may otherwise stop the progress of the cause, till he is paid. *Merrett v. Mellish*.

5. Party may discharge his solicitor; who has a lien for costs upon papers in his possession; but cannot by retaining them, prevent the progress of the cause, until he is paid. *Twort v. Dayrell*.

6. A solicitor, having declined to act for his client, has a lien for his costs upon a fund in Court. *Byron*.

7. In equity the costs are arranged according to the agreement of the parties; and the solicitor's lien is on the balance under that arrangement. *Taylor v. ...*

8. As to the reason of some cases at law in favour of the attorney's lien for costs, going the length of preventing compromise, *quære. Taylor v. Popham.* - - - XV. 72
  9. Deeds deposited with a solicitor for a particular purpose, and, after that had failed, permitted to remain with him, subject to the general lien. *Ex parte Pemberton.* XVIII. 282
  10. Whether an attorney's lien upon papers extends to the original will of his client, *quære.* Ordered to produce it before the Examiner, and for the hearing of the cause without prejudice. *Georges v. Georges.* - - - XVIII. 294
- PRIVILEGE.—1. Privileges and restraints, as officers.  
2. From arrest, attending petition in bankruptcy.
1. Attorneys are officers of the Court; and have several privileges as such; and there are summary proceedings both for and against them, and peculiar restraints on them in their dealings with their clients, both at law and in equity: at law a judgment obtained by an attorney from his client would only stand as a security for what is actually due. - - - - - II. 201
  2. A solicitor, arrested on his way from his residence to *Lincoln's Inn* Hall, without deviation, for the purpose of attending a bankrupt petition, as solicitor, discharged on personal examination by the Lord Chancellor: the oath administered by the Register; but to be entitled in the bankruptcy. *Castle's Case.* - - - - - XVI. 412

See *Bankrupt* (Act of Bankruptcy 5.) (Assignee 13.) (Costs 1.) (Petitioning Creditor 13.) (Superseding 15. 16.) Counsel 1. 2. Creditor and Debtor. (Party 1.) Evidence. Fraud 27. 38. 49. Interpleader 6. 10. Lien 6. 11. 22. 23. 24. Ne exeat Regno 31. Party 16. Principal and Agent 12. 29. Privilege 2. (Arrest 3. 8. 10.) Purchaser 6.

## AUCTION.

1. }  
2. } Fictitious bidding.  
3. }
  4. Inadequacy alone no objection to specific performance.
  5. }  
6. } Statute of Frauds.  
7. }  
8. }
  9. } Fictitious bidding.  
10. }
  11. Statute of Frauds.
1. At an auction one person only bid for the vendor to £75 an acre upon a private notice to the auctioneer: then after a contest with real bidders the estate was bought at £107. 17s. an acre: and the purchaser some days afterwards paid the duty: he was decreed to perform the contract with costs. *Bramley v. Alt.* - - - - - III. 620

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2. Where all the bidders at an auction except the buyer are bidding for the seller without notice, and the buyer is thereby induced to give more than the value, neither Courts of Law nor Equity will support it. - - -	III.	624
3. No objection to a sale by auction, that persons were employed by the vendor to bid for him without public notice. - - - - -	III.	627
4. Bill for specific performance of a purchase by auction dismissed by Lord <i>Rosslyn</i> with costs, merely as being a hard bargain, from inadequacy of value. Upon a rehearing, Lord <i>Eldon</i> was of opinion, that was not a sufficient ground for refusing a specific performance of a purchase by auction without something more, as fraud or surprise, &c. But the decree was not affected upon another ground; that, a material witness being incompetent, the bill was not supported by evidence. <i>White v. Damon</i> . - - - - -	VII.	30
5. Sale of land by auction is within the Statute of Frauds; and the name of the vendee being put down by the auctioneer is not sufficient. <i>Buckmaster v. Harrop</i> . -	VII.	341
6. As to sales by auction and the agency of the auctioneer, with reference to the Statute of Frauds, <i>quære</i> . -	IX.	249
7. Sales of land by auction are within the Statute of Frauds; except sales under decree. <i>Blagden v. Bradbear</i> . -	XII.	466
8. Auctioneer's receipt for the deposit, not containing expressly or by reference the terms, viz. the price, cannot have the effect of an agreement, binding the vendor within the Statute of Frauds. <i>Blagden v. Bradbear</i> . -	XII.	466
9. The circumstance, that a person bid at an auction under the private direction of the vendors for the purpose of preventing a sale under a sum, specified as the value, is no objection to a specific performance; especially in a case, where the vendors were assignees under a commission of bankruptcy; and the purchaser was not present; but purchased by an agent. <i>Smith v. Clarke</i> . -	XII.	477
10. Whether bidding at an auction on the part of the vendor, for the purpose of enhancing the price, vitiates the sale, and prevents a specific performance, <i>quære</i> . <i>Smith v. Clarke</i> . - - - - -	XII.	477
11. Sales by auction within the Statute of Frauds. - - -	XV.	521

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#### AUTHOR.

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#### AUTHORITY.

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#### AUXILIARY CHARGE.

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### AUXILIARY FUND.

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### AVERMENT.

See *Pleading* 24. 32.

### AWARD.

See *Accident* 1. *Arbitration*. *Contract* 27. (*Specific Performance* 50. 51. 52.) *Fraud* 11.

### BAIL.

1. When explanation of affidavit permitted.
  2. Not required twice for the same cause.
  3. Affidavit examined.
  4. On oath of assignee of bankrupt and committee of lunatic.
  5. Under *ne exeat regno* not discharged by commitment for want of answer,
1. Plaintiff at law has a right to hold the defendant to bail upon his own affidavit; but there have been cases in which the Court of Law has permitted an explanation of the circumstances by the affidavit of the defendant, particularly between foreigners and upon foreign transactions; and where an abuse of the process appeared, has directed common bail to be filed. - - - IV. 590
  2. Defendant cannot be held to bail a second time for the same cause. - - - VIII. 596
  3. Affidavit to hold to bail open to examination. - - - XIX. 314
  4. Bail on oath of assignee of a bankrupt, who will not make an affidavit; and of committee of a lunatic. - - - XIX. 316
  5. Defendant being committed for want of answer, his bail under a writ of *ne exeat regno* not discharged. *Stapylton v. Peill*. - - - XIX. 615
- See *Bankrupt* (*Election* 4.) *Injunction* 44. *Ne exeat Regno* 1. 6. 18. 19. 30. 38. 39. *Practice* 257. *Principal and Surety* 15.

### BAILIFF.

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### BAILIFF OF THE CITY OF LONDON.

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1. Bailee without consideration bound by direction to insure.
1. Bailee, though without consideration, accepting the office, bound throughout: for instance, by a direction to insure. - - - XIII. 185
- See *Discovery* 3.



BANK, COUNTRY.  
See *Bankrupt* (Commission 38.) (*Lien* 2.)

BANK NOTES.  
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BANK OF ENGLAND.

- 1. } Not to look beyond the legal title of executor.
- 2. }
- 3. } Restraining transfer by making them parties ; or with-
- 4. } out it, under stat. 39 & 40 Geo. 3.

1. Bank stock specifically bequeathed to A. in trust to pay a bond debt to himself ; and as to the rest, for B. for life ; remainder over ; the trustee, being also executor, transferred to persons not entitled under the will : the Bank is not chargeable. *Hartga v. The Bank of England.* - - - - -

III. 55

2. The Bank of *England* are not to look beyond the legal title, to the trusts of the will ; and therefore cannot prevent the executor from selling out or transferring stock into his own name. *The Bank of England v. Parsons.* - - - - -

V. 665

3. Notwithstanding the Act of Parliament 39 & 40 Geo. 3. c. 36, the Bank of *England* may still be made parties to a bill to restrain a transfer of stock filed since that Act. A demurrer by the Bank was over-ruled. *Temple v. Bank of England.* - - - - -

VI. 770

4. An application under the act 39 & 40 Geo. 3. c. 36, to restrain the Bank from making a transfer without making them parties, must be upon notice to the defendants ; or on affidavit, as in cases of waste. *Hammond v. Maundrell.* - - - - -

VI. 773

See *Bankrupt* (*Evidence* 48.) *Record* 1. *Sequestration* 2. *Stock* 7. 14.

BANKER.

- 1. Commission to country banker.
- 2. Short bills the property of the remitter, subject to the balance.
- 3. Falsely representing, that they had laid out in the funds, a conspiracy.

1. Reasonable commission 2s. 6d. per cent., allowed to a country banker on discounts, though for a person resident in *London*, and paid through a banker there ; is not colourable. *Ex parte Jones.* - - - - -

XVII. 332

2. Short bills in the hands of a banker are specifically the property of the remitter ; subject to a lien for the balance of the account. - - - - -

XVII. 431

3. False representation by bankers, that they have laid out money in the funds, indictable as a conspiracy. - - -

XVIII. 203

See *Bankrupt* (*Act of Bankruptcy* 19.) (*Assignee* 12.) *Interpleader* 2.

**BANKER AND CUSTOMER.**

*See Bankrupt (Lien 4.) Bill of Exchange. Evidence 56.  
Principal and Surety 27. Short Bill 1.*

**BANKERS' BOOKS.**

*See Evidence 56.*

**BANKERS' CLERK.**

*See Lien 27.*

**BANKRUPT.**

1. Liability of joint estate to separate debt.
2. Creditor's right to a sale.
3. Subject to costs.
4. Distribution equitable.
5. } Distribution of estates respectively.
6. }
7. Apportionment for holder of accommodation bill having a farther debt.
8. Not discharged from purchase.
9. Assignment for value under certificate by fraud.
10. Distribution of estates respectively.
11. Specialty creditor's right against real assets.
12. Acceptor for honor of drawer.
13. Separate insurance of joint property.
14. General regulations.
15. Separate insurance of joint property.
16. Composition with one joint debtor.
17. Discharged liability not revived indirectly.
18. Lord *Apsley's* Order 1774 questioned.
19. Not appearing.
20. Right to inspection and to rectify specific errors : not to surcharge, &c., account settled.
21. Sale to creditor, consulted as to the mode of sale and against an Order.
22. Gift to son.
23. } Purchase in names of himself and wife.
24. }
25. Cannot sue upon general charge of collusion.
26. } Estates in *Scotland* and the colonies.
27. }
28. Distribution of separate estate.
29. Deposit of mortgage and bond without notice.
30. Payment in course of trade.
31. Uncertificated, trading.
32. Administration of joint property under separate commission.
33. Purchase in names of himself and wife.
34. Second docket: the fourth day a holyday.
35. Discovery against purchaser without notice.
36. Indorsement after bankruptcy.
37. Though lunatic.
38. Order to attend after examination.
39. } Attainted.
40. }

41. Disputing commission not to see proceedings.
  42. Action after act of bankruptcy, if no commission.
  43. Whether he can impeach commission on prior debt, &c.
  44. Dying without surrender.
  45. Commission established under strong suspicion.
  46. Infant trading as adult.
  47. Uncertificated, acquiring property.
  48. Cannot take objection, open to another.
  49. Waggon trade, sold under commission, revived by a different route.
  50. Compensation for interest in nature of good-will.
  51. Right to inspect books, a list of proofs and wearing apparel.
  52. Injoined from vexatious dispute of commission.
  53. Suspending advertisement.
  54. Assignment preferred to Extent for acceptances not due: distinction as to specific remittances.
  55. Rights of creditors not altered by the Order 1794.
  56. No bill after liberty to bring action with directions.
  57. Docket to compel composition.
  58. *Cestui que* trust of dividends for life; the capital to his next of kin.
  59. Preference under Act to relieve commercial credit.
  60. Represents his estate until assignment.
  61. Bankers to the commission becoming bankrupt.
  62. Exceptions to Master's Report on petition.
  63. Certificate by fraud.
  64. Commission for mere purpose of certificate.
  65. Suspending advertisement.
- 
1. A sole trader, indebted by bond, took in a nominal partner, but without fraud: two years afterwards the partnership failed: that separate debt not permitted to be proved against the joint estate; unless something, as payment of interest by both, to make the partnership liable; for which very little would be sufficient.  
*Ex parte Jackson.* - - - - - I. 131
  2. Commissioners not to decide, whether an estate of bankrupt shall be sold, or not: there must be an order for sale: any creditor has a right to insist on it. - - - I. 169
  3. Costs personally against an uncertificated bankrupt in a case of fraud and misconduct. *Lock v. Bromley.* - - - III. 40
  4. Commission of bankruptcy is not now treated as an execution at law; for the distribution is equitable. - - - III. 239
  5. Separate creditors cannot take a dividend upon the joint estate rateably with the joint creditors: each estate is applicable to its own debts. - - - - - III. 240
  6. In bankruptcy the usual directions are to apply the funds respectively; the joint to the joint debts, the separate to the separate debts; the surplus of each to the creditors remaining on the other. - - - - - III. 241
  7. Accommodation bills upon the bankruptcy of the drawer were fully paid by the acceptors to the holder; who,

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having a farther demand under the commission, proved for the whole, including the bills: he may take out of the dividend upon the bills the proportion, he would have received upon the residue of his debt beyond the bills, if the debt for the bills had been expunged: the rest of the dividend on the bills belongs to the acceptor.

*Ex parte Turner.* - - - - -

III. 243

8. Bankruptcy of a person, who has agreed to purchase, does not discharge the contract. - - - - -

III. 255

9. A bankrupt, who had obtained his certificate, being possessed of leasehold premises as executor and residuary legatee, mortgaged them to secure a debt of his own; and afterwards assigned the equity of redemption for valuable consideration; the deed reciting, that the assignment was made for the purpose of paying the debts of the testatrix. The assignee took an assignment of the mortgage. The certificate being in an action held to have been fraudulently obtained, the lease was claimed by the assignees under the bankruptcy: but it was determined, they had no right against the assignee for valuable consideration. *Bedford v. Woodham.* - - -

IV. 40, n.

10. In bankruptcy the joint estate is to be first applied to the joint debts; and, after they are paid, the surplus, if any, to the separate debts; and *vice versa* as to the separate estate. - - - - -

IV. 840

11. A specialty creditor has the same right under the bankruptcy of the heir of the debtor, as if he had not become bankrupt; and may therefore follow the real assets or their specific produce in the hands of the assignees. The subject being small, relief was given on petition. *Ex parte Morton.* - - - - -

V. 449

12. Acceptor for the honor of the drawer of a bill originally accepted by the bankrupts, having taken up the bill, ought, if the bankrupts had no effects in their hands, to resort first to the drawer. Therefore though his proof was permitted to stand, the dividend was restrained for an inquiry, whether the bankrupts had effects, and if not, whether the person, who so took up the bill, had effects of the drawer at the time or since. *Ex parte Wackerbath (a).* - - - - -

V. 574

13. Upon a separate commission of bankruptcy the benefit of an insurance, effected by the bankrupt upon his own account on a ship, of which he was joint owner, is not liable to the joint creditors. *Ex parte Parry.* - - -

V. 575

14. Regulations in bankruptcy. - - - - -

VI. 1

15. Upon a separate commission of bankruptcy the benefit of an insurance, effected by the bankrupt upon his own account upon joint property, is not liable to the joint creditors. *Ex parte Browne.* - - - - -

VI. 136

(a) Over-ruled, *Ex parte Lambert*, Vol. III. page 179.

16. Proof under the bankruptcy of one joint debtor after receiving a composition from the other expunged; the release to one being a release to both. *Ex parte Slater.*
17. Held in bankruptcy, that after a voluntary discharge by agreement the creditor cannot make use of a security against third persons; where the effect would be to make the party discharged again liable, though in another form and in the shape of the demand of another person. - - - - -
18. *Quære*, whether the order of Lord *Apsley*, dated the 12th of February, 1774, that a docket struck, and no commission issued thereon, shall in no case prevent a commission by another creditor upon an application not made in less than four days, can be strictly acted upon: the established practice in the office being at variance with it; and there being danger of fraud. *Ex parte Leicester.* - - - - -
19. The time enlarged for a bankrupt, who had omitted to finish his examination: but the order would not discharge a prosecution for the felony. *Ex parte Ricketts.*
20. A bankrupt, pending a commission, has a right to an inspection in respect of the surplus; and the Lord Chancellor will take care, that at the close of it, he shall have justice; but in this case the bankrupt was not permitted to surcharge and falsify in the Master's office the accounts settled by the Commissioners long ago; though palpable errors, specifically pointed out by a short petition, would be rectified. *Twogood v. Swanston.*
21. Sale by assignees under a bankruptcy by auction to one of the creditors, previously consulted as to the mode of the sale, and contrary to an order, that a receiver should be appointed to sell: another sale was directed: the estate to be put up at the aggregate amount of the purchase-money, and the sum laid out in substantial improvements and repairs; which were to be allowed in case of a sale at an advance: but, if no further bidding, the purchaser to be held to his purchase. *Ex parte Hughes.* - - - - -
22. A mere gift of money by the bankrupt to his son not within the statute 1 Jac. 1. c. 15. *Ex parte Skorland.*
23. Purchase by a man in the joint names of himself and his wife, if he was a trader at the time and he afterwards become bankrupt, is void against the creditors, within the statute 1 Jac. 1. c. 15. s. 5. So, if the purchase was made with the wife's money, if previously received and disposable by him as his own; not bound by any agreement with a trustee: and the receipt not connected with the purchase. *Glaister v. Hewer.* - - - - -
24. Purchase by a trader, afterwards a bankrupt, in the joint names of him and his wife, is void, as against the cre-

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- itors within the statute 1 James I. c. 15. s. 5. *Glaister v. Hewer.* - - - - - IX. 12
25. Bill by a bankrupt against a mortgagee of estates in *England* and *Berbice* for an account and payment of the balance to the assignees, also defendants; charging collusion generally; but not averring that there will be a surplus; nor charging a direct application to the assignees to sue. Demurrer allowed. *Benfield v. Solomons.* IX. 77
26. Real estates in Scotland sold under a commission of bankruptcy. - - - - - IX. 81
27. Principle, that what the bankrupt may depart with, the creditors shall have the benefit of under the bankruptcy. Adopted as to estates in *Scotland* and the colonies. - - - - - IX. 86
28. In bankruptcy joint creditors cannot touch the separate estate, till the separate creditors are fully satisfied. - IX. 124
29. Deposit of a mortgage and bond by the mortgagee without notice to the mortgagor. The mortgagee becoming bankrupt, his assignees were decreed to assign accordingly. - - - - - IX. 411
30. Payment in the course of trade, if without notice of the act of bankruptcy, good; though under process. - IX. 515
31. An uncertificated bankrupt in general can acquire property only for the creditors. Therefore, having entered into a trade, in partnership, the creditors of that partnership have no equity against the assignees for an account and application to the debts of the property used or acquired in that partnership. *Everett v. Backhouse.* X. 94
32. Under a separate commission of bankruptcy the joint property is administered, as if both partners were bankrupts, viz. in satisfaction of the joint debts, either by bill or petition: in order to ascertain the surplus, constituting the separate interests. - - - - - X. 98
33. Purchase by a trader, afterwards a bankrupt, in the joint names of him and his wife, is void as against the creditors within the stat. 1 Jac. 1. c. 15. s. 5. *Glaister v. Hewer.* XI. 377
34. Where the fourth day after a docket struck is a holyday, the practice of the bankrupt office is to permit a docket to be struck upon the first application the next day; as, though the office was shut, the party might apply at the clerk's residence. *Ex parte Cooper.* - - - - - XII. 418
35. Authority of the commissioners and the *Lord Chancellor* in bankruptcy to compel a discovery even against a purchaser for valuable consideration without notice. - XIII. 189
36. Indorsement after bankruptcy of a security, delivered to a creditor previously, valid. *Ex parte Greening.* - XIII. 206
37. Lunacy is no defence against a commission of bankruptcy; as it would not be against an action. *Anon.* - - - XIII. 590
38. Jurisdiction in bankruptcy, enforcing the commissioners' order for the attendance of the bankrupt; who had

	passed his examination, and obtained his certificate (a). <i>Ex parte Stevens.</i> - - - - -	Vol. Page XIV. 449
39.	A person attainted can be heard as a suitor in a Court of Justice only for the direct purpose of reversing the attainder; not in the prosecution of a civil right. On that ground the petition of a bankrupt, attainted under a conviction for felony upon the statute 5 Geo. 2. c. 30, was dismissed. <i>Ex parte Bullock.</i> - - - - -	XIV. 452
40.	Whether a commission of bankruptcy can issue against a person attainted, as he may be sued in a civil action, <i>quære?</i> - - - - -	XIV. 452
41.	Bankrupt, disputing the bankruptcy, not permitted to see the proceedings; and his solicitor having originally acted also for the assignees, a practice, that ought not to prevail, the trial was staid; the assignees and the petitioning creditor under the circumstances jointly to indemnify the Messenger in the action against him, and to be at liberty to defend it, if they thought proper; reserving the question upon the indemnity as between themselves. <i>Ex parte Vaughan.</i> - - - - -	XIV. 513
42.	Action lies for a debt, notwithstanding an act of bankruptcy by the plaintiff; no commission having issued. -	XIV. 557
43.	Whether a bankrupt or any person in the same circumstances, can impeach the commission upon a prior act of bankruptcy and a debt sufficient to support a commission, of which a third person may avail himself, as a defence to an action by the assignees, <i>quære?</i> A petition to revive an order for trying the validity of a commission in an issue upon that objection, which had not been prosecuted, and was discharged in 1803, dismissed with costs. <i>Ex parte Donovan.</i> - - - - -	XV. 6
44.	Though a bankrupt dies, not having surrendered, the commission may proceed. - - - - -	XV. 494
45.	Commission of bankruptcy established under strong circumstances of suspicion: particularly, that the affidavit and bond for the docket were written by the bankrupt; whose brother was the petitioning creditor. <i>Ex parte Steele.</i> - - - - -	XVI. 161
46.	Bankrupt, praying to supersede his commission on the ground of infancy, left to his action; having traded two years as an adult; and the creditors resisting. <i>Ex parte Watson.</i> - - - - -	XVI. 265
47.	Inconsistency of the decisions, that a bankrupt, uncertificated, has no property; yet may acquire it by action. -	XVI. 474
48.	As to the distinction, that an objection, which a third person may take, cannot be taken by the bankrupt, <i>quære?</i> especially with reference to criminal cases. -	XVI. 476
49.	Sale under a commission of bankruptcy of the waggon trade from <i>Bristol</i> and <i>Bath</i> to <i>London</i> with the good-	

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(a) See the note, Vol. XIV. page 451.



- will. Another concern from *Bristol* and *Bath* to *Warminster* and *Salisbury* being purchased in trust for the bankrupt, having obtained his certificate he commenced trade again to *London* by that road; soliciting customers by advertisement and cards; stating generally, that, being reinstated by his friends in the carrying business, his waggons set out at the usual hours, &c. An injunction was refused. *Cruttwell v. Lye.* - - - - - XVII. 335
50. Compensation under the *London Docks Act* to the proprietors of ancient privileged quays passed under a Commission of bankruptcy. - - - - - XVII. 343
51. Right of a bankrupt, without regard to his conduct, to an inspection of his books, &c. under the statute 5 Geo. 2: c. 80. s. 5. for the purpose of his examination; to a list of the debts proved; and to have wearing apparel delivered to him. What may be retained as his necessary wearing apparel, within the terms of the exception, must be determined by him at his last examination at the peril of indictment. *Ex parte Ross.* XVII. 374
52. Injunction against a bankrupt, vexatiously disputing his commission. - - - - - XVII. 393
53. Advertisement of bankruptcy in the *Gazette* suspended; but only on the ground, that there was not a sufficient act of bankruptcy on the proceedings: viz. a denial to a creditor, with subsequent approbation; but the time not ascertained; nor connected with the previous direction, ten months before the Commission. A farther affidavit was required; upon which the Commission was superseded. *Ex parte Foster.* - - - - - XVII. 414
54. Preference of the assignment under a Commission of bankruptcy to an Extent for general acceptances, not due at the bankruptcy. Distinction upon acceptances for the money of the Crown, specifically remitted. Whether the debt, so constituted, can be altered by taking the acceptance, or it is to be considered only as a collateral security, *quære?* - - - - - XVII. 431
55. General Order in bankruptcy, (8th March, 1794), not intended to alter the rights of joint and separate creditors with regard to each other. - - - - - XVIII. 71
56. After an order in bankruptcy for liberty to bring an action, with special directions for a production of papers and not to set up the bankruptcy, a bill of discovery cannot be filed. *Cooke v. Marsh.* - - - - - XVIII. 209
57. Practice of striking a docket for the purpose, not of a commission of bankruptcy, but of compelling a composition, disapproved, and not aided. - - - - - XVIII. 298
58. Trust to pay the dividends from time to time into the proper hands of a man, or on his proper order or receipt, subscribed with his own hand; that they should not be grantable, transferrable, or otherwise assignable, by way of anticipation of any unreceived payment, or



any part thereof: on his decease the principal to be paid to such persons as in a course of administration would become entitled to his personal estate; and as if it had been his personal estate, and he had died intestate. An interest for life in the dividends, assignable under a Commission of bankruptcy: with a limitation over of the principal to those entitled under the statute of Distributions. *Brandon v. Robinson.* - - -

XVIII.

59. Order for payment out of a bankrupt's estate, with interest to the time of payment, in preference to all other creditors, with costs, under stat. 51 Geo. 3. c. 15. s. 48, for an issue of Exchequer Bills. *Ex parte Holden.* -

XVIII.

60. Bankrupt represents his estate, until assignees are chosen.

XIX.

61. Bankers, appointed under a Commission of bankruptcy, becoming bankrupts, their estate cannot have any dividend on a debt previously due to them, until the whole, received by them as bankers to that estate, has been accounted for. *Ex parte Bebb.* - - -

XIX.

62. Exceptions filed to the Master's report, under a reference in bankruptcy, upon petition for liberty to except. *Ex parte Thistlewood.* - - -

XIX.

63. Proofs in bankruptcy expunged and certificate recalled; being obtained by fraud. *Ex parte Cawthorne.* -

XIX.

64. Commission of bankruptcy, for the mere purpose of giving a certificate, a conspiracy, liable to indictment or information. - - -

XIX.

65. Insertion of bankruptcy in the *Gazette* suspended only where on inspection of the proceedings no bankruptcy found; or under a Country-commission to give the opportunity of producing the evidence. Under the circumstances an issue directed to try the bankruptcy; which had not appeared in the *Gazette*; all proceedings under the Commission being stayed. *Ex parte Tarleton.*

XIX.

66. The *Lord Chancellor* refused to stay proceedings under a Commission of bankruptcy, not opened, upon the allegation that there was no petitioning creditor's debt: the Commission issuing of right under the Act of Parliament. *Ex parte Lanchester.* - - -

XVII.

67. Insertion of adjudication of bankruptcy in the *Gazette* suspended by the *Lord Chancellor* upon inspection of the proceedings: the act of bankruptcy not being proved.

XVII.

ABATEMENT.—ACT OF BANKRUPTCY.—ALLOWANCE.—ANNUITY.—ASSIGNEE.—ASSIGNMENT.—ASSIGNMENT OF BOND.—ATTORNEY AND SOLICITOR.—BANK OF ENGLAND.—BANKER.—CERTIFICATE.—COMMISSION—COMMISSIONERS.—COMMITMENT.—COMPOSITION.—CONDITIONAL LIMITATION.—CONTEMPT.—CONTRIBUTION. COSTS.—CROWN.—DIVIDEND.—ELECTION.—EVIDENCE. EXECUTION.—EXECUTOR.—EXTENT.—INTEREST.—JURISDICTION.—LIEN.—LOSS AT PLAY.—MESSENGER.—MORTGAGE.—PARTNER.—PETITION.—PETITIONING CREDITOR.—PLEDGE.—POWER.—PREFERENCE.—PRI-

VILEGE.—PROCEEDINGS.—PROOF.—REHEARING.—RELATION.—REPUTED OWNER.—SET OFF.—SHIPOWNER. STATUTE OF LIMITATIONS.—STOCK.—STOCKHOLDER. SUPERSEDEAS.—SURETY.—SURPLUS.—SURRENDER.—TRADING.—UNDERWRITER.—USURY.—WIFE.

ABATEMENT.—1. } By plaintiff's bankruptcy: not in the Exchequer; in injunction bill: whether assignees made parties by revivor or supplemental bill in nature of it.

1. By the bankruptcy of the plaintiff the suit becomes defective: if not abated by analogy to law. The assignees ordered to be made parties in a limited time, or the bill to be dismissed; whether with costs, *quære?* *Randall v. Mumford.* - - - - -

XVIII. 424

2. Practice of the Court of Exchequer: holding the bankruptcy of the plaintiff no abatement; and therefore dismissing the bill with costs for want of prosecution. -

XVIII. 426

3. Upon the bankruptcy of the plaintiff in an injunction bill the assignees to be made parties, or the injunction dissolved. - - - - -

XVIII. 427

4. Whether assignees under a Commission of bankruptcy against the plaintiff are made parties by bill of revivor or supplemental bill in nature of it, &c. *quære?* -

XVIII. 428

ACT OF BANKRUPTCY.—1. Secret: effect of.  
2. Lying in prison originally under criminal sentence.  
3. Not by mere residence abroad.  
4. } Attendance of witnesses compelled.  
5. }  
6. As to the necessity for a creditor to call.  
7. By assignment by deed of book debts.  
8. Attendance of witnesses compelled.  
9. After retiring from trade.  
10. Quitting the house from groundless apprehension.  
11. Denial; though debtor both seen and heard.  
12. After retiring from trade with a previous debt.  
13. Concerted.  
14. Assignment of all for all creditors.  
15. Keeping house.  
16. Assignment by deed for creditors.  
17. Attendance of witnesses compelled.  
18. Not by denial without direction, or with intervening interview.  
19. Not by shutting a bank as to partner resident elsewhere.

1. A bond, assigned after a secret act of bankruptcy by the assignor, as security for money, afterwards paid to his

use, cannot be retained against the assignees under the commission. <i>Hammersley v. Parling.</i>	Vol. Page III. 757
2. <i>Quære</i> , whether lying two months in prison, charged in actions for debts, and being surrendered in discharge of bail, could constitute an act of bankruptcy; the original commitment being under a criminal sentence; during which the party was so charged (a). <i>Ex parte Bowes.</i>	IV. 168
3. A commission of bankruptcy on residence abroad (b), where the departure from the realm was for a fair and proper purpose, and not with a view of defrauding creditors, the trade continued by a partner, and the petitioning creditor's debt subsequent, superseded. <i>Ex parte Mutrie.</i>	V. 576
4. Witnesses to prove the act of bankruptcy not having obeyed the summons of the commissioners, an order was made that they should attend the commissioners (c). <i>Ex parte Lund.</i>	VI. 781
5. Jurisdiction in bankruptcy to compel witness to attend the commissioners to prove the act of bankruptcy; reserving just exceptions: viz. by a solicitor, professionally employed (d). <i>Ex parte Higgins.</i>	XI. 8
6. That a creditor should have called is not required for the act of bankruptcy by absconding, as for that of keeping house. As to the reason of that distinction, if the latter can be established by other evidence, <i>quære?</i> <i>Wydown's Case.</i>	XIV. 80
7. Whether an assignment by deed of book debts is an act of bankruptcy depends upon what other effects the trader had.	XIV. 186
8. Jurisdiction in bankruptcy to enforce the commissioners' summons for the attendance of witnesses to prove the requisites to support the commission, and to commit for contempt by disobedience to an order, though no express authority, by the general jurisdiction (e).	XIV. 451
9. Act of bankruptcy, committed after retiring from trade, sufficient. <i>Ex parte Bamford.</i>	XV. 449
10. Act of bankruptcy by quitting the dwelling-house with the intention of delaying a creditor; though under the impression of a groundless apprehension.	XV. 449
11. Act of bankruptcy by denial to a servant, calling for a debt by the direction of the acknowledged agent of the creditor, and by the appointment of the creditor; and though the debtor was seen by the person applying through the window of a partition; and heard, giving directions to deny him.	XV. 449
12. Act of bankruptcy by a man, who had retired from trade,	

(a) See the note, Vol. IV. page 173.

(b) See the note, Vol. V. page 578.

(c) See the note, Vol. VI. page 784.

(d) See the note, Vol. XI. page 9.

(e) See the note, Vol. XIV. page 450.

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but during the existence of a debt, contracted while in trade, will sustain a commission. - - - - -

XV. 494

13. A concerted act of bankruptcy not available, except for creditors not privy to it. Commission upon a concerted act of bankruptcy may be supported by another act.

*Ex parte Bourne.* - - - - -

XVI. 148

14. Assignment of all property, though for the satisfaction of all the creditors, an act of bankruptcy. - - - - -

XVI. 145, 148

15. Circumstances, amounting to an act of bankruptcy by keeping house; viz. not going to his counting-house; nor into the town, near which he lived; sending for his papers to his house; not going out, except taking an evening walk in the country. - - - - -

XVI. 149

16. Assignment by partners by deed of property, proved to be all their property, in trust for their creditors; with a proviso to be void, if all the creditors for above £20 should not execute, or a commission of bankruptcy should issue within a certain time, is an act of bankruptcy: not, where, the deed being joint, and not several, one never executed. *Dutton v. Morrison.* -

XVII. 193

17. A witness, refusing to attend the commissioners to prove the act of bankruptcy, ordered to attend them (a). *Ex parte Jones.* - - - - -

XVII. 379

18. Denial to a creditor, with subsequent approbation, if not connected with previous direction, or if in the interval the debtor had seen, and conversed with, the creditor, not an act of bankruptcy. - - - - -

XVII. 416

19. Shutting up a banker's shop not an act of bankruptcy by a partner, residing in another place. - - - - -

XIX. 553

**ALLOWANCE.**—1. Under second commission.

1. Upon a second bankruptcy no allowance to the bankrupt; the estate not paying 15s. in the pound. *Ex parte Gregg.* - - - - -

VI. 283

**ANNUITY.**—1. Ordinary proof of value.

1. The value of an annuity to be proved in bankruptcy is, not the stipulated price for redemption, nor the original price simply; but, in the absence of any peculiar circumstances, the original price with the variation occasioned by the lapse of time since the grant. *Ex parte Whitehead.* - - - - -

XIX. 557

**ASSIGNEE.**—1. Charged with interest.

2. Compelled to sell.

3. Not to keep money.

4. Charged with interest made: if none, 4 per cent.

5. Has the equity of the creditors.

6. Purchasing the property.

7. All assignees dead, and the heir of survivor an infant: new choice.

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(a) See the note, Vol. VI. page 784.

8. Liability by taking a lease, instead of selling.
  9. Liability by deferring sale.
  10. Purchasing the property.
  11. Purchasing dividends.
  12. The banker not to be assignee.
  13. Purchasing dividends.
  14. Purchasing the property.
  15. Property vested in.
  16. Bankrupt permitted to sue in name of.
  17. To reimburse messenger on superseding for fraud.
  18. Purchasing the property.
  19. } Bound to make a title.
  20. }
  21. Joint creditors voting under separate commission.
  22. Purchasing the property.
  23. Choice not disturbed on mere accident.
  24. Principle of removing.
  25. Authority limited.
  26. Bound to make a title.
  27. Subject to equities.
  28. Removed and assignment, &c. vacated except as to purchasers.
  29. Resident in *Scotland* removed.
  30. Joint creditors voting under separate commission.
  31. Of a partner not to engage in new adventures without consent.
  32. Charged with interest.
  33. Separate creditors cannot vote under joint commission.
  34. Joint creditors voting under separate commission.
  35. Chosen by creditors entitled to prove under the Act of Parliament.
  36. Joint creditors voting under separate commission.
  37. Charged with interest.
  38. } Joint creditors voting under separate commission.
  39. }
  40. Separate creditors cannot vote under joint commission.
1. Interest at 4 *per cent.* against assignees of bankrupt for not making a dividend, when they ought, will be increased upon circumstances. *Hilliard's Case.* - - - I.
  2. Assignees of bankrupt made no dividend; but thirteen years after the bankruptcy had from the produce of the property accumulated enough to pay 15s. in the pound: sale and distribution ordered on petition of one creditor. *Ex parte Goring.* - - - - - I.
  3. Assignee of bankrupt must not keep money in his hands. I.
  4. Assignees kept the fund eight years without dividing; one admitted, he had lent the share received by him at 5 *per cent.* the other, that he had lent his share to a partnership, in which he was engaged, with his own money without any distinct charge of interest: decreed to pay such interest, as shall appear to have been made; and, where none, 4 *per cent.* *Hankey v. Garratt.* - I.

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5. Assignees have all the equity the creditors have ; and may impeach transactions, which the bankrupt could not. - II. 255
6. Assignees of a bankrupt removed on the ground, that one of them had purchased the bankrupt's estates under the commission for himself. A re-sale was directed ; and the purchaser to account for a profit gained by him upon a re-sale of part : but he was discharged from the purchase only conditionally ; in case the re-sale should produce more. *Ex parte Reynolds.* - V. 701
7. Order under statute 5 Geo. 2. c. 30, that new assignees may be chosen, and that the commissioners may execute a new bargain and sale and assignment, the former being vacated ; all the assignees being dead ; and the heir at law of the survivor an infant. *Ex parte Bainbridge.* - VI. 451
8. Assignees of bankrupt, instead of selling the estate taking a lease to himself, is answerable for profit or loss. *Ex Hughes.* - VI. 617
9. Assignee of bankrupt not justified in deferring a sale ; and in such a case, if called upon to sell, will incur the penalty of answering any depreciation. - VI. 622
10. As to a purchase by a trustee of the trust property, the rule is, that it shall not prevail under any circumstances, unless the connection appears satisfactorily to have been dissolved (a transaction to be viewed with great jealousy, from the opportunity of acquiring knowledge as trustee), or by an universal consent : but as against him it shall stand ; as, if more cannot be obtained. The rule applies to all agents, and most strictly, to assignees in bankruptcy, from their great power. In this instance, that of an assignee, another sale was directed ; the premises to be put up at the price he gave ; and if no more bid, his purchase to stand. As he had bought them in at a former sale at a higher price, when there was another bidder to a greater amount than the final purchase, *quære*, how the assignee is to be charged as to that difference. *Ex parte Lacey.* - VI. 625
11. Assignee of a bankrupt, purchasing dividends, is a trustee for the creditors, or bankrupt, according to the circumstances. - VI. 625
12. A banker, receiving the money under a bankruptcy, ought not to be an assignee. - VI. 625
13. Purchase by the assignee and solicitor under a commission of bankruptcy of dividends cannot be for their own benefit. *Ex parte James.* - VIII. 337
14. The principle against purchases by trustees of the trust property most strictly applicable to assignees in bankruptcy and their agents. - VIII. 350
15. At law all the property, subject only to distinction as to local situation, vested by the bankruptcy in the assignees ; who in most cases must declare as such. - IX. 83

16. Bankrupt, stating, that apparent incumbrances are no substantial charge, and the assignees refusing, or not permitted by the creditors, to interfere, permitted to use their names, indemnifying them. - - - IX. 84
17. Commission of bankruptcy superseded for fraud; nothing done under it; and the petitioning creditor not to be found. The assignees, not having attended the summonses, though not privy to the fraud, and not having received any effects, ordered to re-imburse the messenger the expense subsequent to the choice of assignees, not that previously incurred. *Ex parte Hartop*. IX. 109
18. The rule against purchases of trust property by the trustee applies with more force to assignees in bankruptcy. - - - X. 395
19. Assignees of a bankrupt, contracting to sell, bound, as other persons, to make a good title: but in special cases, as, if they contracted supposing they had a good title, the parties would be left to law. - - XI. 343
20. Assignees under a bankruptcy, contracting to sell an estate, generally, bound, as other persons, to make a title to the inheritance, free from incumbrances: but, if it appears, before the contract executed, that they cannot make such title, the parties would be left to law. XI. 345
21. Joint creditors cannot vote or interfere in the choice of assignees under a separate commission of bankruptcy (a). *Ex parte Alcock*. - - - XI. 603
22. Assignee in bankruptcy, having purchased an estate of the bankrupts under the commission, held a trustee of the profit upon the re-sale; in the first instance for an equitable mortgagee by possession of the deeds; who, having delivered them up on receiving the produce of the first sale, was held under the circumstances not to have lost his lien for the deficiency. *Ex parte Morgan*. XII. 6
23. The choice of assignees in bankruptcy not disturbed on the ground, that creditors were prevented by accident from voting; if not kept back by fraud. *Ex parte Surtees*. - - - XII. 10
24. Principle of removing an assignee in bankruptcy: proof of insolvency, compounding with his creditors, &c.; misconduct; or, that an account cannot be conveniently or justly taken, while he remains. The simple circumstance, that he is to account, not sufficient. - - XII. 10
25. The authority of assignees in bankruptcy limited to the purposes of their trust, the distribution of the estate under the bankrupt laws; and does not therefore extend to an agreement, disposing of the surplus after 10s. in the pound to the creditors. The petition by a party, claiming under such a transaction, was upon the circumstances dismissed, without prejudice to a bill. *Ex parte Barfit*. - - - XII. 15

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(a) See the note, Vol. XI. page 603.



26. Assignees in bankruptcy bound, as other persons, to make a good title; unless guarded by express stipulation. Their bill for a specific performance therefore, the report being against the title, was dismissed, *M'Donald v. Hanson.* - - - - - XII. 277
27. Assignees subject to all equities, attaching upon the bankrupt. Assignees in bankruptcy take, subject to all equities, under which the bankrupt stood. XII. 349. XIII. 188
28. Assignee in bankruptcy removed; and the assignment and bargain and sale vacated; except as to purchasers. *Ex parte Leman.* - - - - - XIII. 271
29. Assignee in bankruptcy, permanently resident in *Scotland*, removed. *Ex parte Grey.* - - - - - XIII. 274
30. Joint creditors cannot vote in the choice of assignees under a separate commission; unless they pay the separate creditors 20s. in the pound. *Ex parte Hubbard (a).* - - - - - XIII. 424
31. Assignees under a separate commission of bankruptcy against a partner, though generally they cannot engage in new adventures, may with consent of the creditors and bankrupt. - - - - - XV. 228
32. Assignee in bankruptcy removed, and charged with interest at £5 *per cent.* (before statute 49 Geo. 3. c. 121. s. 4.) for money paid in at his banker's to his account, and used as his own property. *Ex parte Townshend.* XV. 470
33. Separate creditors not entitled to vote in the choice of assignees under a joint commission. On that ground a new choice directed; though the *Lord Chancellor* would not interfere, if a creditor had been excluded by mistake, not for the purpose of preventing his voting. *Ex parte Parr.* - - - - - XVIII. 65
34. Joint creditors cannot vote in the choice of assignees under a separate commission (*b*), even if there is only one separate creditor: but an arrangement will be made for the joint creditors by order. - - - - - XVIII. 70
35. The choice of assignees is with the creditors, entitled to prove under the Act of Parliament; excluding persons, who could not be admitted without an order; as separate creditors under a joint commission; now admitted under the General Order (8th March, 1794.) - - - XVIII. 70
36. Joint creditors not entitled to vote in the choice of assignees under a separate commission (*b*); the choice being in the creditors, who went in by their right under the Act of Parliament, not under an order. *Ex parte Longman.* - - - - - XVIII. 71
37. Assignee in bankruptcy charged with interest, not as partner in the bank, into which the money was paid

(a) See the note, Vol. XI. page 603.

(b) Altered by stat. 6 Geo. IV. c. 16. s. 52.



- by direction of the creditors, but for keeping it there too long. *Ex parte Baker.* - - - - - XVIII. 246
38. Order for joint creditors to vote in the choice of assignees under a separate commission of bankruptcy; the petitioning creditor, a joint creditor, consenting; and the only separate debt being under £10. *Ex parte Jones.* XVIII. 283
39. Order for joint creditors to vote in the choice of assignees under a separate commission of bankruptcy, the petitioning creditor, a joint creditor, whose debt overbalanced the separate debts, consenting. *Ex parte Taylor.* - - - - - XVIII. 284
40. Separate creditors not entitled to vote in the choice of assignees under a joint commission of bankruptcy. *Ex parte Jepson.* - - - - - XIX. 224

**ASSIGNMENT.—1. Its effect. Distinction as to assignee for value.**

1. Assignment in bankruptcy, like any other assignment by operation of law, passes the rights of the bankrupt precisely in the same plight and condition as he possessed them; subject to all equities, &c. Distinction as to a particular assignee for a specific consideration. - - IX. 100

**ASSIGNMENT OF BOND.—1. Not on mere suspicion.**

1. The jurisdiction in bankruptcy to assign the bond being with reference to the bankruptcy confined to the case of malice, and conclusive, the *Lord Chancellor* in a case of strong suspicion only would not assign the bond: but superseded the commission with costs, without prejudice to an action. *Ex parte Lane.* - - - XI. 415

**ATTORNEY AND SOLICITOR.—1. May practice, though bankrupt.**

2. } Purchase by the solicitor.  
3. }
4. Bill in bankruptcy and otherwise taxed.
5. Charged with costs.
6. Not necessary to taking out commission.
1. An attorney may practice, though a bankrupt - - II. 68
2. Purchase of a bankrupt's estate by the solicitor to the commission set aside. The *Lord Chancellor* would not permit him to bid upon the re-sale, discharging himself from the character of solicitor, without the previous consent of the persons interested, freely given, upon full information. *Ex parte James.* - - - VIII. 337
3. The solicitor to a commission of bankruptcy cannot purchase under it either for himself or another. *Ex parte Bennett.* - - - X. 381
4. Order in bankruptcy for taxation of a solicitor's bill for business done in bankruptcy, and otherwise. *Ex parte Arrowsmith.* - - - XIII. 124

5. Upon superseding a fraudulent commission of bankruptcy the solicitor charged with costs as well as the other parties; except as to a criminal prosecution, not under a direction in bankruptcy, and in which he was not a defendant. *Ex parte Arrowsmith.* - - - - XIV. 209
6. Any person, not a solicitor, may take out a commission of bankruptcy. *Ex parte Smith.* - - - - XIX. 473

**BANK OF ENGLAND.—1. Manner of proof.**

1. The Bank of *England* not entitled to prove under a commission of bankruptcy by a clerk without a power of attorney. A General Order to enable them proposed (a). *Ex parte The Bank of England.* - - - - XVIII. 228

**BANKER.—1. Taking up his acceptances, not due at the bankruptcy, may prove on bills, not then due.**

1. Acceptances by bankers, and bills remitted to them, in the course of a banking account with the bankrupt. Their acceptances not due at the bankruptcy are a good consideration; and, taking them up, they may prove upon the bills in their hands, though not due at the bankruptcy. The proof must be upon the bills, and not as a cash balance. *Ex parte Bloxham.* - VIII. 531

**CERTIFICATE.—1. Not staid for the result of an action.**

2. Inspection, to defeat it, refused.
3. Joint allowed as separate.
4. For money void; though without bankrupt's privity.
5. Affidavit to stay.
6. Commissioners not controlled.
7. Whether *mandamus* lies.
8. Previous to the examination.
9. Whether *mandamus* lies.
10. Order as to affidavits to stay.
11. Commissioners not controlled.
12. Petition by execution-creditor to prove for the purpose only of staying it dismissed.
13. Staid by creditor, electing to proceed at law.
14. Commissioners not controlled.
15. Sent back for a special purpose open generally.
16. General Order.
17. Not staid on suspicion denied.
18. Staid upon the examination.
19. Whether to be sent back upon the discovery.
20. Incomplete until allowed.
21. Under separate commission before the *Chancellor* for allowance an objection to a joint commission.
22. Not staid on information.

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(a) See the note, Vol. XVIII. page 229.

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23. Distinction as to signing between the creditors and the commissioners and <i>Chancellor</i> .	
24. Legacy vested, pending unfounded petition to stay.	
25. Remedy against it under second commission, not paying 15s. in the pound.	
26. Signed by one trustee only.	
1. Bankrupt's certificate shall not be staid, in order to give a person, insisting on a right to stop <i>in transitu</i> , an opportunity of proving, in case he should fail in his action. <i>Ex parte Heath</i> .	VI. 613
2. General inspection of a bankrupt's books, for the purpose of getting rid of the certificate by proving gambling transactions, refused. <i>Ex parte Mawson</i> .	VI. 614
3. Joint certificate in bankruptcy allowed as the separate certificate of the survivor. <i>Ex parte Currie</i> .	X. 51
4. Bankrupt's certificate void; if obtained by money, though without his privity. <i>Ex parte Butt</i> .	X. 359
5. Whether affidavits to stay a bankrupt's certificate, filed after the petition presented, must be confined to replying to new matter introduced by the bankrupt, <i>quære</i> .	X. 359
6. In bankruptcy the discretion of the commissioners as to the bankrupt's certificate not controlled. <i>Ex parte King</i> .	XI. 417
7. Whether a <i>mandamus</i> to commissioners to sign a bankrupt's certificate lies, <i>quære</i> .	XI. 419
8. Whether a signature of the bankrupt's certificate previous to the last examination is valid, <i>quære (a)</i> .	XI. 424
9. Whether a <i>mandamus</i> to commissioners of bankruptcy to sign the bankrupt's certificate will lie, <i>quære</i> .	XI. 425
10. General Order in bankruptcy, that affidavits in support of a petition to stay the certificate shall be brought into the office together with the petition; except such as shall be necessary in reply to affidavits in answer to it. <i>Ex parte Bowes</i> .	XI. 540
11. The discretion of the commissioners as to the bankrupt's certificate not controlled. <i>Ex parte King</i> .	XIII. 181
12. Petition by a creditor, having the bankrupt in execution, to prove, for the purpose of preventing the certificate, then before the <i>Lord Chancellor</i> for allowance; waving the dividend: the bankrupt having been so before. The petition as to staying the certificate dismissed with costs; with liberty to prove. <i>Ex parte Warwick</i> .	XIV. 138
13. Creditor, electing to proceed at law, may lay a ground for staying the certificate.	XIV. 495
14. Judicial discretion of commissioners of bankruptcy as to the certificate not subject to control. <i>Ex parte King</i> .	XV. 126
15. Bankrupt's certificate, sent back for the purpose of letting in other creditors: the commissioners not con-	

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(a) See the note.

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- finer by that object: nor bound by the original certificate: but the whole is open to their judicial discretion: the original and supplemental act making but one certificate, of the latter date. - - - - - XV. 126
16. General Order as to bankrupt's certificates. - - - - - XVI. 318
17. Bankrupt's certificate, though it would be void, if obtained by money, even without his privity, was not staid on mere suspicion, not supported by affidavit, and denied by the bankrupt. *Ex parte Hall.* - - - - - XVII. 62
18. Bankrupt's certificate, signed by the commissioners, staid by the *Lord Chancellor* under circumstances, appearing upon the examination; particularly the inconsistency of the statement, that he had no written documents except a book produced, appearing to have been compiled from other written documents. *Ex parte Bangley.* - - - - - XVII. 117
19. Whether bankrupt's certificate can be sent back to the commissioners, to be reviewed upon the point, whether a full discovery has been made, *quære.* - - - - - XVII. 117
20. Bankrupt's certificate not requiring a stamp, until complete by allowance, an objection from alterations, after it had been stamped, before allowance, over-ruled. *Ex parte Sawyer.* - - - - - XVII. 244
21. Objection to a joint commission, that under a separate commission the certificate had been obtained; and lay before the *Lord Chancellor* for allowance. *Ex parte Hamper.* - - - - - XVII. 403
22. Petition to stay a bankrupt's certificate upon allegation of concealment, sworn to only upon information and belief, dismissed with costs. *Ex parte Joseph.* - - - - - XVIII. 340
23. Distinction as to signing bankrupt's certificate: depending on the caprice of the creditors; but, if no wilful concealment, the commissioners are bound to sign, and the *Lord Chancellor* to allow, without regard to conduct previous to the bankruptcy. - - - - - XVIII. 342
24. Legacy, falling to a bankrupt before allowance of his certificate by the testator's death pending an unfounded petition to stay it, goes to his assignees; unless the petition was presented with that object. *Ex parte Ansell.* - - - - - XIX. 208
25. Liability of bankrupt's property, notwithstanding certificate under a second commission, not paying 15s. in the pound, only by judgment in an action; not to be taken by the assignees under the commission (a). *Ex parte Hodgkinson.* - - - - - XIX. 291
26. Signature of one trustee to a bankrupt's certificate without authority to act for the other, not sufficient (b). *Ex parte Rigby.* - - - - - XIX. 463

(a) Altered by stat. 6 Geo. 4. c. 16. s. 127. See the note, Vol. XIX. page 294.  
 (b) See the note, Vol. XIX. page 293. *Ex parte Blakely*, 1 Glyn & Jam. 197.

- COMMISSION.—**1. Concurrent commissions not permitted—generally the second superseded, subject to circumstances.
2. Distinguished from execution.
  3. Joint and separate blended.
  4. } Concurrent commissions not permitted.
  5. }
  6. Abuse by delay.
  7. Concerted may stand on another act of bankruptcy : though to defeat an execution.
  8. Arrangement under joint commission for separate creditors and firms.
  9. Description not altered.
  10. Opened, not re-sealed for clerical error.
  11. Altered on mistake, if not opened.
  12. To prevent execution supported.
  13. Applied for by different persons at the same time.
  14. General Order as to striking docket, &c.
  15. Opened not altered.
  16. Supported on fraction of a day.
  17. Whether striking docket could be considered issuing the commission within the clause against compounding.
  18. Sealed in the night to prevent Extent.
  19. To defeat execution supported.
  20. Second, before certificate.
  21. Joint void as to one.
  22. Joint alone now ; under which separate estate distributed.
  23. Separate on joint debt.
  24. Lord *Erskine's* Order to prevent abuse of docket.
  25. Docket not without belief of act of bankruptcy.
  26. Separate on joint debt.
  27. Second before certificate void : but discretion to supersede either on notice.
  28. } Auxiliary limited.
  29. }
  30. } An execution.
  31. }
  32. Dated previous to the act of bankruptcy not re-sealed.
  33. Not opened, re-sealed on mistake of name.
  34. General Order as to sealing.
  35. With an unascertained name in an urgent case.
  36. Second preferred under circumstances.
  37. Speculating disapproved.
  38. To be executed immediately.
  39. } General Order as to the time of application
  40. } from docket struck.

1. Two commissions of bankruptcy for the same purpose cannot subsist together : in general the second will be

- superseded: but special circumstances, as consent, fraud, or laches, in the creditors under the first will support the second, and supersede the first; and though it is wrong to encourage a bankrupt to trade pending a commission, and to sue out a second, yet, if it does happen, and the assignees will pay the creditors under the first 20s. in the pound and all the costs, the first will be instantly superseded. *Ex parte Brown.* - II. 67
2. A commission of bankruptcy differs from an execution in vesting all rights and possibilities of the bankrupt: the latter passes only what the sheriff seizes. - - - II. 68
3. Joint and separate commissions of bankruptcy now are blended together; and the practice of taking out both is exploded as an unnecessary expense. - - - II. 69
4. Assignees under a second commission of bankruptcy would be nonsuited in trover against assignees under the first. - - - - - II. 69
5. Where two commissions are taken out against the same party, the Court will exercise a discretion, controlling the strict right; and support that which is most convenient; if the objections to it can be removed by superseding the other. *Ex parte Layton.* - - - VI. 434
6. Abuse of a commission by delaying the execution of it with a view to another arrangement. - - - VI. 434
7. Though a commission of bankruptcy cannot stand upon a concerted act of bankruptcy (*a*), it may be supported, if any other act of bankruptcy, not liable to that objection, has been committed; and the privity of the bankrupt is no objection: nor, that the object of the commission is to defeat an execution. *Ex parte Edmonson.* - - - - - VII. 303
8. Under a joint commission of bankruptcy the affairs of the separate creditors may be arranged, and also of separate firms of two or more of the partners. - - - VIII. 545
9. Alteration in the description of a bankrupt refused. *Ex parte Thompson.* - - - - - IX. 207
10. A commission of bankruptcy cannot be resealed, even to correct a mere clerical error, after any dealing upon it; as if it has been opened. *Fisher's Case.* - - - X. 190
11. Alteration in a commission of bankruptcy upon mistake permitted, before it has been opened and acted upon: not afterwards. *Burrow's Case.* - - - X. 286
12. No objection to a commission of bankruptcy, taken out by a creditor *bond fide*, not at the instance of the bankrupt, that the direct object is to prevent an execution. XI. 541
13. Instructions to strike a docket received from the country on *Sunday* by a solicitor; who, before the bankrupt-office opens on the following morning, receives similar instructions from another client. They must draw lots;

(a) See the note, Vol. VII. page 303.

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according to the course upon two applications at the same instant. <i>Hayes's Case.</i> - - - - -	XIII.	197
14. General Order in bankruptcy as to striking a docket and sealing a commission. - - - - -	XIII.	207
15. A commission of bankruptcy, that has been acted upon, cannot be altered. Therefore, the commission being opened, and the commissioners having qualified, but the proof of the act of bankruptcy failing, in order to prove an act of bankruptcy subsequent to the date of the commission the commission was superseded; and a new commission issued. <i>Ex parte Thwaites.</i> - - -	XIII.	325
16. Fraction of a day, in support of a commission of bankruptcy, by admitting evidence, that the act of bankruptcy, though on the same day, was previous to the issuing, <i>i.e.</i> the awarding and sealing the commission. <i>Wydown's Case.</i> - - - - -	XIV.	80
17. Whether the striking the docket could be considered as the issuing of the commission, especially with reference to the 24th section of the statute 5 Geo. 2. c. 30, a penal clause, <i>quære (a).</i> - - - - -	XIV.	80
18. Commission of bankruptcy sealed in the night to prevent an Extent. - - - - -	XIV.	87
19. No objection that a commission of bankruptcy was taken out for the express purpose of defeating an execution. <i>Ex parte Arrowsmith.</i> - - - - -	XIV.	209
20. A second commission against an uncertificated bankrupt cannot be maintained, whether separate or joint. <i>Ex parte Martin.</i> - - - - -	XV.	114
21. A joint commission of bankruptcy, void as to one partner, cannot be maintained against the other ( <i>a</i> ). -	XV.	115
22. The former course in bankruptcy was, that a joint and separate commission stood together. Now the joint commission alone stands: the assignees can at law recover both the joint and separate estate; and the same distribution is made, as if both commissions stood. -	XV.	115
23. Joint creditor may take out a separate commission of bankruptcy: and receive dividends. - - - - -	XV.	499
24. The object of Lord <i>Erskine's</i> General Order in Bankruptcy, 29th December, 1806, (see vol. xiii. 207) to prevent dealing with a docket for the purpose, not of a commission, but of another arrangement: a practice to be discountenanced. <i>Ex parte Bourne.</i> - - - -	XVI.	145
25. A docket not to be struck without a solid ground of belief, that an act of bankruptcy has been committed -	XVI.	145
26. Separate commission of bankruptcy by a joint creditor. -	XVI.	195
27. A commission of bankruptcy against an uncertificated bankrupt is, strictly, void. Formerly the course was to let joint and separate commissions stand together: now		

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(a) Altered by 6 Geo. 4. c. 16. s. 16.



either is superseded, as may best answer the ends of justice, by arrangement: notice being given to the creditors under the first commission: the bankrupt in this instance having traded again in a distant place under another name, that notice was directed. *Ex parte Crew.*

XVI. 236

28. Commission of bankruptcy against a distant country bank executed in *London*. On account of the holders of small notes in the country another commission was ordered, to be executed there, for the purpose only of receiving proof of debts there: the proofs so taken to be received under the *London* commission. *Ex parte Upham.*

XVII. 212

29. Auxiliary commission of bankruptcy, to receive proof of debts in the country, limited to notes under £20; and liberty to examine the bankrupts under it refused.

XVII. 213

30. Commission of bankruptcy in nature of an execution.

XVII. 251

31. Commission of bankruptcy an action and execution in the first instance.

XVII. 408

32. Petition to have a commission of bankruptcy, of a date previous to the act of bankruptcy, resealed, refused.

*Ex parte Cheeseman.*

XVIII. 480

33. Commission of bankruptcy resealed to correct a mistake in a name, if not opened.

XVIII. 480

34. Construction of the General Order in Bankruptcy (29th December, 1806) that the commission must be sealed at the first public seal after application within four days after the docket, though within less than seven days.

*Ex parte Hyne.*

XIX. 61

35. Order for a commission of bankruptcy against *J. Stevenson*, otherwise *Stephenson*, in an urgent case. *Stevenson's Case.*

XIX. 277

36. On application to supersede a commission of bankruptcy and issue another, the act of bankruptcy being subsequent to the date of the commission, the solicitor was required to state by affidavit, why he took out a commission, which he could not support. Pending that, the time having expired, another creditor obtained a *Superseas* and a commission under the apprehension of immediate Extents. The bankruptcy was afterwards declared under the first commission upon acts of bankruptcy found previous to its date; but the latter commission was preferred. *Ex parte Mavor.*

XIX. 539

37. Speculating commissions of bankruptcy without the means of supporting them disapproved.

XIX. 540

38. Commission of bankruptcy, especially against country bankers, to be executed immediately, without waiting the time allowed by the General Order of 1793.

XIX. 542

39. Application for a commission of bankruptcy on the evening of the fourth day from striking the docket, immediately before eight o'clock, the hour of shutting the office,



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sufficient within the General Order, 29th December, 1806. <i>Nicholls's Case.</i> - - - - -	XIX.	616
40. General Order, 29th December, 1806. - - - - -	XIX.	616, n.

- COMMISSIONER.**—1. Direct the mode of sale.  
 2. Barristers in a country commission.  
 3. Not controlled in examination.  
 4. Cannot purchase.  
 5. Not to decline acting; and recommend a petition.  
 6. Removed not to pay costs.  
 7. When subject to costs.  
 8. Made parties without ground, have costs.  
 9. Action for costs of nonsuit not restrained.  
 10. Warrant without a second summons.  
 11. Duties, as to certificate: and judicial character.  
 12. Protect witnesses, as a Court of Justice.

- |  |           |
|--|-----------|
| 1. Upon bankruptcy the mode of selling an estate is left to the commissioners: not directed by the Court; as in a sale by a Master. <i>Ex parte Comings.</i> - - - - -   | I. 112    |
| 2. General Order, that in a country commission two barristers, resident near the place, be inserted in the list of commissioners; and no <i>quorum</i> commissioner, unless a barrister. - - - - -   | V. 578    |
| 3. The <i>Lord Chancellor</i> refused to interfere with the discretion of commissioners of bankruptcy by an order upon them to enforce answers from a person, examined as to the bankrupt's property received by him. <i>Ex parte Farr.</i> - - - - -  | IX. 513   |
| 4. A commissioner of bankruptcy cannot purchase under the commission either for himself or another. <i>Ex parte Bennett.</i> - - - - -   | X. 381    |
| 5. Commissioners of bankruptcy ought not to decline to act, and have a petition presented, merely to get the opinion of the <i>Lord Chancellor.</i> <i>Anon.</i> - - - - -   | XIII. 590 |
| 6. Commissioners of bankruptcy removed for misconduct; but are not to pay costs. <i>Ex parte Scarth.</i> - - - - -   | XIV. 204  |
| 7. Commissioners of bankruptcy may be ordered to pay costs in respect of conduct out of the course of their duty as commissioners. <i>Ex parte Scarth.</i> - - - - -   | XV. 293   |
| 8. Costs to commissioners in bankruptcy, made parties to a petition without sufficient ground: viz. for refusing to admit the affidavit of an absent creditor, proceeding at law; not permitting the examination of the petitioning creditor by a person, who had not proved a debt; and admitting the full proof of a creditor, claiming a lien on papers in his hands, as agent in town for the bankrupt, an attorney. <i>Ex parte Steele.</i> - - - - - | XVI. 161  |

9. Petition to restrain an action by commissioners of bankruptcy against the assignees for costs of defending an action against the commissioners and messenger for false imprisonment, in which the plaintiff was nonsuited, or for a contribution among the creditors, dismissed. No distinction, exonerating creditors, who were absent: proving by affidavit they adopt all the proceedings. *Ex parte Linthwaite.* - - - XVI. 235
  10. Warrant of commissioners of bankruptcy to arrest a witness may issue at once on disobedience to their summons; and does not require a second summons. - XVI. 235, n.
  11. Duties of commissioners of bankruptcy, particularly with reference to the certificate; having also in a sense an independent judicial character. - - - XVII. 118
  12. Commissioners of bankruptcy considered a Court of Justice for the purpose of protecting witnesses before them. - - - XIX. 165
- COMMITMENT.—1. On examination not reasonably satisfactory, though positive.
2. } Remedy *Habeas corpus*.
  3. }
  4. Not discharged, because farther examination useless. As to compelling discovery of a felony.
  5. Of bankrupt in his absence and ante-dated.
  6. Illegal. Previous examination incorrectly stated.
  7. Discharge whether on petition without *Habeas corpus*.
  8. Bankrupt committed brought up; though no effects.
  9. Illegal: the power of examining being transferred to the assignees.
  10. By the Court after discharge on form.
1. A bankrupt may be committed by the commissioners, though swearing positively, if his answers are not reasonably satisfactory. Being brought up by *Habeas corpus* he was remanded; the whole examination not being satisfactory; though particular answers, separately taken, might have been so considered. *Taylor's Case.* - - - VIII. 328
  2. Remedy of a bankrupt against commitment by the commissioners by writ of *Habeas corpus*; not by petition. The regularity of the commitment was questionable. *Ex parte Tomkinson.* - - - X. 106
  3. The mode of reviewing the judgment of commissioners of bankruptcy, committing the bankrupt for not answering satisfactorily, is by *Habeas corpus*. - XI. 425
  4. Bankrupt committed by the commissioners for not giving a satisfactory account. If the commitment is legal, no discretion upon *Habeas corpus* to discharge him upon

circumstances; that farther examination can be of no use to the creditors. As to the validity of the commitment, to the extent of compelling the discovery of a felony, *quære?* *Ex parte Nowlan.* - - -

X

5. No objection to a commitment of a bankrupt by the commissioners, that the order of commitment was made in the absence of the bankrupt; and that it bore date the day the examination took place, though made some days afterwards. *Salt's Case.* - - -

XII

6. Commitment by commissioners of bankruptcy for an unsatisfactory answer of the bankrupt illegal: the recital of the previous examination not correctly stating the admissions, upon which the question was founded. Re-examination directed: the bankrupt being in custody also under a surrender by his bail. *Ex parte Hiams.*

XVII

7. Whether a person committed by commissioners of bankruptcy can be discharged on petition without a *Habeas corpus, quære?* - - -

XVII

8. Order on application of a bankrupt committed to bring him again before the commissioners; if no effects, the fees to be paid out of future effects, if any. If re-committed, he would find it difficult to obtain another order. *Ex parte Cohen.* - - -

XVIII

9. Commitment of bankrupt on a question, whether he had communicated to his assignee according to the direction of the commissioners, where and how persons, named by him as debtors, were to be found, and if not, why not, answered, he had not, and could state no reason why, illegal; and the bankrupt discharged on *Habeas corpus*: the commissioners having no power to delegate their power to examine; and the bankrupt, no consent appearing on the warrant, not being bound to submit, or to state, why he did not; but, had they personally required the information from him, which he must be supposed capable of giving, his answer, that he would not, or could not, however direct, not being satisfactory, would justify commitment. *Cassidy's Case.*

XIX

10. If a person, committed by commissioners of bankruptcy, is entitled to be discharged only from a defect in form, the Court on *Habeas corpus* required to commit. -

XIX

COMPOSITION.—1. Not to be received on a subsequent bankruptcy, with proof of the residue; when no appropriation.

2. Proof under covenant to pay deficiency after two years on bankruptcy within that time, with rebate.

3. Proof under proviso on breach for proof of the residue of the original debt.

1. A creditor, who has not received dividends under a composition, if a bankruptcy takes place, and there is no fund separated to his use, cannot have those dividends

out of the bankrupt's estate, and prove the residue of his debt; but must come in as the other creditors at the date of the bankruptcy. *Ex parte D'Oliviera.* -

VIII. 84

2. Assignment, in trust to pay the creditors, who should execute the deed; with a covenant by the debtor, that if the creditors should not out of that fund be paid in full within two years, to pay the deficiency within a month afterwards. In the event of a bankruptcy before the end of two years, the creditors under the deed are entitled to prove the deficiency after application of the trust fund; subject to a rebate. *Ex parte Richardson.*

XIV. 184

3. Proviso in a deed of composition, that in case of default of payment, or if a commission of bankruptcy should issue, the covenants to accept the composition should be void, and the creditors be paid, or prove, their whole debts, deducting only what had been received. Upon bankruptcy after breach and a subsequent part-payment the creditors were held entitled to prove the whole residue of their debts, according to the proviso, retaining what they had received. *Ex parte Vere.* -

XIX. 93

CONDITIONAL LIMITATION.—1. To cease on alienation ceases by bankruptcy.

2. On bankruptcy.

3. Of wife's property until, or lease determinable on, bankruptcy.

1. Annuity by will charged upon real estate for *A.* for life, payable to him only, upon his own receipt and no other, and to cease immediately on alienation, ceases by the bankruptcy and bargain and sale of the estate of *A.* *Dommett v. Bedford.* - - - - -

III. 149

2. Property may be limited to a man, to go over on a certain event, as bankruptcy: but, while his property, it must be subject to the incidents of property, and therefore to debts. *Brandon v. Robinson.* - - - - -

XVIII. 429

3. Limitation of a wife's property until the bankruptcy of her husband, or a lease determinable on the bankruptcy of the lessee, good. - - - - -

XIX. 92

CONTEMPT.—1. Putting messenger out of possession, &c.

1. The messenger under a commission of bankruptcy was put out of possession of property on board a ship by threatening to throw him overboard: the parties also using contemptuous language. Ordered to give security for answering the bankrupt's interest. *Ex parte Dixon.*

VIII. 104

CONTRIBUTION.—1. Between joint and separate estates.

1. Contribution decreed between the joint and separate estates; the former having paid beyond the proportion of a debt to the Crown under an Extent, and the bankrupts being bound jointly and severally. *Rogers v. Mackenzie.* - - - - -

IV. 752

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**COSTS.**—1. Relating, though previous, to bankruptcy, taxed.

- 1. Order in bankruptcy to tax the solicitor's bill for striking the docket and a journey to get an affidavit of debt; being business relating to the bankruptcy, though previous to it. *Ex parte Smith.* - - - - -

V.

**CROWN.**—1. Not bound.  
2. Jurisdiction between Crown and subject.

- 1. The bankrupt statutes do not bind the Crown. - -
- 2. The *Lord Chancellor* in bankruptcy holds an even hand between the Crown and the creditors. - - -

XIX.  
XIX.

**DIVIDEND.**—1. After four months.  
2. Discretion to stay.

- 1. First dividend in bankruptcy to be after the expiration of four months. - - - - -
- 2. Discretion of the *Lord Chancellor* to stay a dividend in bankruptcy for the general benefit of the creditors. Not exerted to increase the dividend by throwing joint creditors of the bankrupts and a deceased partner upon his assets in favour of creditors of the survivors only: the equity of joint creditors against the surplus of the separate estate, though the debt survives at law, being open to equitable circumstances; upon the state of the accounts; or subsequent dealing with the survivors; which may discharge the assets; and the equitable arrangement, confining creditors to one of two funds, being admitted only in favour of creditors of the same debtor, except upon special equity; as in the case of drawer and acceptor, or principal and surety. *Ex parte Kendall.* - - - - -

XIV.  
XVII.

- ELECTION.**—
- 1. After execution.
  - 2. Whether to be immediate.
  - 3. No bar as to certificate.
  - 4. After dividend, and against bail.
  - 5. Formerly not compelled before dividend.
  - 6. Not after signing certificate.
  - 7. Not by discharge after surrender in discharge of bail, and never charged in execution.
  - 8. Under joint and separate security.
  - 9. By joint and separate creditor.
  - 10. Formerly not compelled before dividend.
  - 11. By taking bankrupt in execution after commission.
  - 12. Bankrupt in execution when commission issues.
  - 13. On execution before bankruptcy not compelled until dividend.
  - 14. } Compelled on oppression before dividend.
  - 15. }
  - 16. Not on debts of different nature.
  - 17. Under joint and several bond.

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18. Not by judgment without execution ; bankrupt surrendering in discharge of bail.
  19. By mortgagee proving.
  20. By claiming under the commission.
- 
1. Six months after bankruptcy a creditor, who had bankrupt in execution on judgment, petitioned for an account and to be admitted under the commission ; account ordered ; dividend to be reserved to the extent of the verdict. A few days after he was ordered to elect in a fortnight. *Ex parte Hopkinson.* - - - I. 159
  2. *Quære*, whether a creditor may wait a reasonable time for a dividend, or must elect immediately (a). - - I. 159
  3. Creditor having taken his remedy at law cannot take a dividend too ; but may assent or dissent to certificate. - I. 159
  4. Creditor, three years and a half after receiving a dividend, on refunding permitted to proceed at law against the bankrupt ; so against bail put in after the commission was abandoned ; not if surprised ; as where after bail put in plaintiff submitted to the commission, on which account they neglected to surrender their principal ; and he absconded. *Ex parte White (b).* - II. 9
  5. Defendant at law, having lain two months in prison, was made a bankrupt ; and discharged under a *Supersedeas* ; the plaintiff not having proceeded for two terms ; the plaintiff then proved his debt under the commission ; and before a dividend took the bankrupt in execution in a fresh action : the bankrupt's petition for an order on the plaintiff to release him was dismissed. *Ex parte Callow (c).* - - - III. 1
  6. Though a creditor, having received a dividend under a bankruptcy, might before stat. 6 Geo. 4, refund and proceed at law, he could not, if he has signed the certificate. *Ex parte Freeman.* - - - IV. 836
  7. Bankrupt surrendered in discharge of his bail, and discharged by the creditor, having never been charged in execution : this is no election ; and the creditor was admitted to prove. *Ex parte Cundall.* - - - VI. 446
  8. Proof under a joint and separate security ; but not to take dividends from both estates. - - - IX. 225
  9. A joint and separate creditor must elect against which estate to go in the first instance ; and electing to go against the joint estate he has no preference to the other joint creditors upon the surplus of the separate estate beyond the separate debts. *Ex parte Bevan.* - X. 107
  10. Creditor not bound to elect to proceed at law or under a commission of bankruptcy before a dividend ; therefore,

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(a) See the note, Vol. I. page 160.  
 (b) See the note, Vol. II. page 9.  
 (c) See the note, Vol. III. page 1.

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having the bankrupt in custody on mesne process, was permitted to vote in the choice of assignees (a). <i>Ex parte Sharpe.</i> - - - - -	XI.	203
11. Bankrupt being taken in execution after the commission issued, the effect is an Election; without regard to the particular motive. <i>Ex parte Knowell.</i> - - - - -	XIII.	192
12. Creditor, having the bankrupt in execution at the time the commission issues, may elect. - - - - -	XIII.	193
13. Creditor, having the bankrupt in execution before the bankruptcy, not bound to elect until a dividend. - - - - -	XIV.	138
14. A creditor of a bankrupt, holding him in prison under an arrest for part of his debt, and, when supersedable, continuing him there under a detainer for another part of the same debt, being also assignee under the commission, and, when ordered to make a dividend, not proving, but making a claim only to a less amount than he had sworn to at law, compelled to elect. <i>Ex parte Parquet.</i> - - - - -	XIV.	493
15. Exception to the general rule, that election to come in under a commission of bankruptcy or proceed at law could not be compelled before dividend: the creditor having for the purpose of taking both remedies split an entire demand: and, being the assignee, delayed a dividend. <i>Ex parte Grosvenor.</i> - - - - -	XIV.	587
16. Creditor not compelled to elect in bankruptcy; if the debts were of a different nature; as a note and a bond (b). - - - - -	XIV.	588
17. In bankruptcy a creditor by a joint and several bond must elect, whether he will go against the joint or separate estate; but was not bound by taking a joint security. <i>Ex parte Hay.</i> - - - - -	XV.	4
18. Judgment in an action against a bankrupt, not followed by execution, the bankrupt having surrendered in discharge of his bail, not an election to proceed at law, preventing the plaintiffs going in under the commission. <i>Ex parte Arundel.</i> - - - - -	XVIII.	231
19. Mortgagee, having giving up his mortgage, and proved under a commission of bankruptcy against the mortgagor, not allowed to retract. <i>Ex parte Downes.</i> - - - - -	XVIII.	290
20. Effect of stat. 49 Geo. 3. c. 121. s. 14. A creditor, coming in under a commission of bankruptcy for the purpose of relief, waves his personal remedy. - - - - -	XVIII.	341
EVIDENCE.—1. Parol of deed, which cannot be produced, as an act of bankruptcy.		
2. Affidavits before commissioners on collateral facts.		
1. Act of bankruptcy on parol evidence of a deed, which cannot be produced. - - - - -	XIX.	234

(a) See the note, Vol. XI. page 68.

(b) See the note, Vol. XIV. page 588.



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2. Commissioners of bankruptcy, as they cannot issue *Sub-pœnas*, must upon questions of fact, coming before them collaterally, proceed by affidavit. - - - -

XIX. 250

EXECUTION.—1. In *Jersey* completed before the act of bankruptcy on the same day, preferred.

2. Creditor in *England* attaching estate abroad.

3. } Over-reached by relation.
4. }
5. }

1. Property, attached in *Jersey*, being by the laws of that island vested in the creditor, attaching upon confirmation by the Court of the island, in the case of a bankruptcy it was held, that the creditors attaching were entitled to hold the property attached and to prove for the residue, where the act of bankruptcy was subsequent to the completion of the judicial act, whether on the same or any other day; but where the act of bankruptcy was previous, they could not hold against the assignees. *Ex parte D'Obree*. - - - -

VIII. 82

2. Creditor in *England*, and subject to the bankrupt laws, having attached the bankrupt's estate abroad, must restore it. - - - -

IX. 80

3. Injunction against proceeding under a foreign attachment by a joint creditor upon a separate commission of bankruptcy, over-reaching the attachment by relation to the act of bankruptcy. *Barker v. Goodair*. - - - -

XI. 78

4. Attachment in the *West Indies* over-reached by bankruptcy. - - - -

XI. 83

5. An execution over-reached by a prior act of bankruptcy. - - - -

XI. 84

EXECUTOR.—1. Directed to carry on trade with a limited sum: assets not liable beyond that.

1. Under the bankruptcy of an executor and trustee, directed by the will to carry on the trade, and a limited sum to be paid to him by the trustees for that purpose, the general assets beyond that fund not liable. *Ex parte Garland*. - - - -

X. 110

EXTENT.—1. Tested the day of provisional bargain and sale preferred.

1. A debt to the Crown preferred to creditors under a bankruptcy; the sheriff being in possession under several Extents; one of which for part of the debt was tested the day the provisional bargain and sale and assignment were executed; the others having issued subsequently. *Rogers v. Mackenzie*. - - - -

IV. 752

INTEREST.—1. Not beyond penalty of bond.

2. Subsequent only in case of contract and a surplus.
3. Stops at date of commission; unless a surplus.

1. Under bankruptcy no interest beyond the penalty of a bond. - - - -

II. 301



2. Rule in bankruptcy, that in most cases interest stops at the date of the commission, subject to an equity, giving it, in cases of contract only, if finally the effects are sufficient (a). - - - - -

XI

3. In bankruptcy interest stops at the date of the commission; unless a surplus; in which case creditors, having debts bearing interest, receive subsequent interest (b).

XIV

JURISDICTION.—1. } Distinct from Court of Chancery.  
 2. }  
 3. } Legal and equitable.  
 4. }  
 5. Between officers; messenger and solicitor.  
 6. Legal and equitable.  
 7. On petition claiming against the commission.  
 8. Beyond the statutes.  
 9. } Legal and equitable.  
 10. }  
 11. Distinct from Court of Chancery.

1. The jurisdiction of the <i>Lord Chancellor</i> in bankruptcy is distinct from that of the Court of Chancery. - - -	VI
2. The jurisdiction in bankruptcy is under a special authority, distinct from that of the Court of Chancery -	VIII
3. The jurisdiction in bankruptcy both legal and equitable.	XI
4. Jurisdiction in bankruptcy equitable as well as legal. -	XII
5. Jurisdiction between officers; as between the messenger and solicitor in bankruptcy. <i>Ex parte Hartop.</i> -	XII
6. Jurisdiction in bankruptcy legal and equitable. - -	XV
7. Jurisdiction in bankruptcy on the petition of persons claiming, not under the commission, but against it, specific property. <i>Ex parte Pease.</i> - - -	XIX
8. Jurisdiction in bankruptcy beyond the statutes. - -	XIX
9. Legal and equitable jurisdiction of the <i>Lord Chancellor</i> in bankruptcy more by practice than authority. - -	XIX
10. Administration in bankruptcy both legal and equitable. -	XIX
11. Distinction between the jurisdiction in the Court of Chancery and in bankruptcy. - - - - -	XIX

LIEN. 1. By order during insolvency, not in contemplation of bankruptcy.

2.  
 3. }  
 4. } On short bills, remitted by country-banker.  
 5. }  
 6. }

1. Holder of note gave it up on receiving an order to pay out of purchase-money. It was not accepted: but purchaser verbally agreed to give notice to attend, when the deeds and money were ready. He did attend ac-

(a) See Vol. XI. page 303, note.

(b) See Vol. II. page 303, note.

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cordingly: but, before the business was over, drawer was arrested; and soon after a bankrupt: holder had a lien; the order not being given in contemplation of bankruptcy, though he knew drawer to be insolvent at the time. *Yeates v. Groves.* - - - - -

I. 280

2. Short bills remitted by a country bank to their banker in *London*; standing at the bankruptcy of the latter entered short, in the usual way; not being due. Ordered on petition in the bankruptcy to be delivered up by the assignees to the country bank; who, not being creditors, when the petition was presented, the cash balance being against them, had since become so; turning it in their favour by taking up the bankrupt's acceptances on their account. The order was made without requiring the petition to be amended by stating that fact; but upon consent of the Crown; holding an extent for acceptances of the bankrupt on account of duties, received and remitted specifically by the country bank. *Ex parte Rowton.* - - - - -

XVII. 426

3. Short bill in the hands of a bankrupt, as agent, and not by consent or the course of dealing considered as cash, to be returned; or the proceeds, received after the bankruptcy; though the bill was due previously; and retained, so as to discharge the indorser. *Ex parte Sollers.* - - - - -

XVIII. 229

4. Bills, remitted by a country bank to their banker in *London*, remaining at his bankruptcy in his hands undue, or unapplied according to the authority given, or afterwards coming to the hands of the assignees, and the proceeds received, restored and paid to the remitters, taking up the acceptances on their account, and subject to the banker's lien for any balance; by the contract remaining the property of the remitters, in the hands of the banker as agent for a particular purpose, viz. to hold until due, and receive the proceeds; then first forming an item in the cash account. The circumstance of the bill being written short is only evidence of a trust; proved in this instance by express declaration, or other evidence equivalent. *Ex parte Pease.* - - - - -

XIX. 25

5. Order on a provisional assignee to deliver up short bills, leaving a sufficient amount to answer acceptances on account of the petitioners, and indemnifying the estate against any possible loss upon them; an extent being otherwise satisfied. *Ex parte Buchanan.* - - - - -

XIX. 201

6. Distinction as to short bills, to be returned on bankruptcy.

XIX. 610

LOSS AT PLAY.—1. Recoverable by assignee.

1. The right to sue for money lost at play, given by statute 9 Ann. c. 14, to the loser, is a vested interest; and upon his bankruptcy passes to the assignees. *Brandon v. Sands.* - - - - -

II. 514

- MESSENGER.**—1. Action against the solicitor.  
 2. } Obstruction, force or contemptuous language,  
 3. } and contempt. Powers and liabilities.  
 4. Giving up possession, whether another warrant necessary.

1. Commission of bankruptcy superseded: the petitioning creditor absconding. The messenger, having recovered part of his demand from him, was permitted to bring an action against the solicitor for the residue, and damages and costs in an action against him, acting under the commission. *Ex parte Hartop.* - - - XII. 349
2. Contumacious obstruction of the messenger under a commission of bankruptcy treated as a contempt; though acting under the authority of the commissioners, given by statute; not under the *Lord Chancellor's* order in bankruptcy; as in the case of commitment; upon which the *Lord Chancellor* can do no more than grant the writ of *Habeas corpus*, as holding the Great Seal; not by his authority in bankruptcy. *Ex parte Page.* - - - XVII. 59
3. The messenger in bankruptcy is to enter and seize at his own hazard the property of the bankrupt: but if he enters the house and seizes the property of another, acting under authority, he cannot be turned out: but the party must take his remedy at law; and contemptuous language, or force, is a contempt of the Great Seal. *Ex parte Page.* - - - XVII. 59
4. Whether after execution of the warrant of seizure of commissioners in bankruptcy, the messenger, having given up possession, can again seize without another warrant. - - - XVII. 59

- MORTGAGE.**—1. On proof of the deficiency no interest since the commission.  
 2. Second mortgagee not compelled to join in sale.  
 3. Bankrupt's right, with a clear interest, to redeem.  
 4. Mortgagor, bankrupt, restrained from cutting underwood.  
 5. Equitable, requires special order.  
 6. Equitable: costs of petition.

1. A mortgage upon a bankrupt's estate being deficient, the mortgagee, proving the remainder of his debt under the commission, cannot charge interest beyond the date of the commission. *Ex parte Badger.* - - - IV. 165
2. The *Lord Chancellor* has no authority in bankruptcy to compel a second mortgagee, not claiming under the commission, but resting on his security, to join in a sale, obtained by a prior mortgagee under the General Order, 8th May, 1794, not producing enough for both mortgages. *Ex parte Jackson.* - - - V. 357
3. A bankrupt cannot file a bill of redemption in respect of his right to the surplus: but when he has a clear in-

terest, and the assignees refuse, the *Lord Chancellor* will upon petition and an offer of indemnity compel them to let him use their names. - - - -

V. 590

4. Mortgage of wood and underwood. It is not waste by the mortgagor in possession to cut underwood at seasonable times, and of proper growth: but being a bankrupt, an injunction was granted on the right of the mortgagee to have the estate sold in the plight, in which it was at the bankruptcy, and to prove the rest of his debt. *Hampton v. Hodges.* - - - -

VIII. 105

5. Order in bankruptcy on petition for sale of the premises, subject to an equitable mortgage: the General Order (8th March, 1794), applying only to legal mortgages. *Ex parte Payler.* - - - -

XVII. 434

6. Equitable mortgagee must pay the costs of his petition in bankruptcy. *Ex parte Warry (a).* - - - -

XIX. 472

**PARTNER.**—1. Proof for joint estate overdrawn against separate estate.

2. Distribution under separate commission.

3. Joint commission against two of three.

4. Separate commission, though the other died before assignment.

5. Evidence of partnership.

6. Contribution to joint debts.

7. Assignment by one retiring to the other.

8. Joint commission against two; another residing abroad.

9. }  
10. } One an infant or lunatic.

11. Paper of one firm given to the creditors of another, the same persons.

12. Effect of relation on solvent partner.

13. Application of joint estate and surplus under separate commission.

14. Proof between distinct concerns by the same individuals.

15. One acting for another.

16. Solvent ousted of the Statute of Limitations by dividend under separate commission.

17. Certificate signed after dissolution.

18. Effect of bankruptcy of one on the separate interests and the subsequent execution of a joint creditor.

19. Dormant in profits, not capital.

20. }  
21. } One acting for all.  
22. }

23. Discount after bankruptcy of some, but before that of all.

1. Creditors of a partnership, which failed in two years, allowed to come upon the separate estate of one partner

(a) See the note, Vol. XIX. page 472.

in respect of effects taken out of the partnership by him without the privity of the other. <i>Ex parte Assignees of Lodge and Fendal.</i> - - - - -	I.
2. One partner absconded; and died abroad; but never was a bankrupt: separate commission against the other, under which the assignees seized joint effects: the joint debts are to be first paid out of the joint fund; the residue divided between the bankrupt's estate and the representative of the deceased partner. <i>Hankey v. Garratt.</i> - - - - -	I.
3. A partnership of three becoming insolvent, and one being an infant, a joint commission of bankruptcy against the other two was superseded (a). <i>Ex parte Henderson.</i>	IV.
4. A separate commission of bankruptcy established; though the other partner died before the assignment. <i>Ex parte Smith.</i> - - - - -	V.
5. A partnership cannot be established by the evidence of the partners and their private communications. The fact must be proved <i>aliunde</i> . For want of such proof a commission against the ostensible partners was sustained. <i>Ex parte Benfield.</i> - - - - -	V.
6. Money paid by one partner in a joint concern, being his liquidated share of the joint debts, to another partner, as agent for settling the debts, if not applied accordingly, may be proved as a debt upon the bankruptcy of the latter; and therefore a payment by the other on the same account after the bankruptcy cannot be recovered from the bankrupt; who had obtained his certificate: but in respect of another payment, also after the bankruptcy, in consequence of the failure of the bankrupt and other partners in paying their shares, a right to contribution arose; and the whole was recovered in an action against the bankrupt, who had obtained his certificate; the defendant not having pleaded in abatement. <i>Wright v. Hunter.</i> - - - - -	V.
7. A fair dissolution of partnership between two: one retiring; and assigning the partnership property to the other; and taking a bond for the value and a covenant for indemnity against the debts: the other continued the trade separately a year and a half; and then became a bankrupt. The <i>Lord Chancellor</i> was of opinion, the joint creditors had no equity attaching upon partnership effects remaining <i>in specie</i> ; and at all events such a claim ought to be by a bill, not a petition. <i>Ex parte Ruffin.</i> - - - - -	VI.
8. A joint commission against two partners in <i>England</i> , another partner residing abroad, superseded. <i>Ex parte Layton (b).</i> - - - - -	VI.

(a) See the stat. 6 Geo. 4. c. 16. s. 16.  
(b) See the note, Vol. VI. page 440.

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9. Where one partner is an infant, or lunatic, there cannot be a joint commission of bankruptcy against the others: separate commissions must be taken out (a). - - - VI. 440
10. Joint commission of bankruptcy superseded on the ground of the infancy of one partner on the petition of the assignees under a separate commission. *Ex parte Barwis.* VI. 601
11. In bankruptcy among partners, concerned also in other trades, the paper of one firm being given to the creditors of another, dividends were allowed out of both estates. - - - - - VIII. 546
12. Effect of the relation under a separate commission of bankruptcy; making the assignees and the solvent partner tenants in common from the date of the act of bankruptcy. - - - - - XI. 83
13. In the case of a separate bankruptcy execution not permitted, even by a joint creditor: but the joint effects distributed, even in the absence of the solvent partner; and the surplus applied under all the equities subsisting between the partners themselves. This pursued in some degree, though very tenderly, in the administration of assets. - - - - - XI. 85
14. Partners engaged individually in other concerns: if they are distinct, proof may be made in bankruptcy of debts as between the different estates; not, if they are merely branches of the joint concern. *Ex parte St. Barbe.* XI. 413
15. One partner allowed to act for another in bankruptcy for various purposes; as to prove debts; to execute powers of attorney for voting in the choice of assignees; signing the certificate, &c. *Ex parte Mitchell.* - XIV. 597
16. Payment of dividend under a commission of bankruptcy against one partner raises a new assumpsit by the other, depriving him of the benefit of the statute of limitations. - - - - - XV. 499
17. One partner bound by the other's signature of a bankrupt's certificate after dissolution of the partnership. *Ex parte Hall.* - - - - - XVII. 62
18. The interest of each partner is his share of the surplus, subject to all the partnership accounts; and that interest only is liable to the execution of a creditor. By the bankruptcy of one his interest is divested and vests in his assignees by relation to the act of bankruptcy. Therefore joint creditors under judgment in foreign attachment, of the same date with the commission, but subsequent to the act of bankruptcy, cannot have execution against the joint property; which must be applied among all the joint creditors. *Dutton v. Morrison.* - - - - - XVII. 193
19. Dormant partner by a share of the profits: but the property by agreement belonging exclusively to the other:

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(a) Altered by the stat. 6 Geo. 4. c. 16. s. 16.

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joint commission not supported ; as the joint property would not be liable to execution under an action against the dormant partner. <i>Ex parte Hamper.</i> - -	XVII.	403
20. Joint commission of bankruptcy on affidavit of debt, and bond, sworn, and executed, by one partner on behalf of all. <i>Ex parte Hodgkinson.</i> - - - -	XIX.	291
21. One partner acts for all almost universally in bankruptcy ; proving debts, voting for assignees, and signing certificates. - - - - -	XIX.	293
22. Various acts in bankruptcy by one partner for all. -	XIX.	297
23. Under an agreement to pay bills indorsed into a country bank on discount for the notes of the bank, bills, paid in after the bankruptcy of some partners, but before that of the whole firm, cannot be retained by the assignees. <i>Ex parte M'Gae.</i> - - - - -	XIX.	607
<b>PETITION.—1.</b> Groundless in great part dismissed with costs without prejudice to another for the proper object.		
2. General Order.		
3. Several stamps for distinct orders.		
4. Not against one not claiming under the commission.		
1. Though an order might be made upon part of a petition in bankruptcy, viz. for interest against an assignee, who did not pay in to the bank, appointed by the creditors, under the Act of Parliament, the petition also praying his removal, with much groundless imputation, the whole was dismissed with costs ; without prejudice to another petition, confined to the proper object. <i>Ex parte Vernon.</i> - - - - -	XIII.	270
2. General Order as to the signature of bankrupt petitions.	XVI.	320
3. A petition in bankruptcy, praying distinct orders under several commissions, requires several stamps (a). <i>Ex parte Wilson.</i> - - - - -	XVIII.	439
4. Assignee under a commission of bankruptcy cannot maintain a petition against a person not claiming under the commission. - - - - -	XIX.	46
<b>PETITIONING CREDITOR.—1.</b> Joint for separate commission.		
2. Compromising.		
3. Infant : commission superseded.		
4. His presence on opening dispensed with.		
5. Joint for separate commission entitled with the separate creditors.		
6. Attorney ; though bill not delivered.		

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(a) See the stat. 6 Geo. 4. c. 16. s. 98.



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- PETITIONING CREDITOR.**—7. Not on equitable debt.  
 8. Whether bankrupt can object on act of bankruptcy and debt previous to the petitioning creditor's.  
 9. Joint for separate commission entitled to dividends.  
 10. Obtaining security.  
 11. Striking docket with reference to stat. 5 Geo. 2. c. 30. s. 24.  
 12. Security, &c. after docket, but no commission, not within stat. 5 Geo. 2. c. 30. s. 24.  
 13. Attorney on bill not delivered; subject to examination.  
 14. Commission and act of bankruptcy between verdict and judgment on breach of promise of marriage superseded.  
 15. Joint for separate commission, though as to part trustee for another joint creditor, entitled to dividend.  
 16. His attendance on opening.  
 17. Debt at the bankruptcy should appear on the deposition.  
 18. Neglecting to proceed not to have another commission.  
 19. Deed of trust acquiesced in, though not executed by him, will not support the commission.

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|--|-----------|
| 1. Joint creditor a good petitioning creditor under a separate commission. - - - - -   | III. 290  |
| 2. Creditor by compromising his debt after having struck a docket forfeits the debt (a). <i>Ex parte Gedge.</i> - - -  | III. 349  |
| 3. The bond upon suing out a commission of bankruptcy must be by the petitioning creditor: the commission therefore was superseded on account of his infancy. <i>Ex parte Barrow.</i> - - - - -  | III. 554  |
| 4. The presence of the petitioning creditor at the meeting to declare the party a bankrupt, as required by a General Order of Lord <i>Rosslyn</i> , 26th November, 1798, dispensed with under circumstances. <i>Ex parte Edwards.</i> - - - - -  | VIII. 318 |
| 5. A joint creditor, being the petitioning creditor under a separate commission of bankruptcy, entitled to prove and vote in the choice of assignees, &c. with the separate creditors; not being within the rule, excluding the other joint creditors. <i>Ex parte Hall.</i> - - - - - | IX. 349   |
| 6. An attorney's bill of costs, though it has not been signed and delivered under the stat. 2 Geo. 2. c. 23. s. 22, is a   |           |

(a) See the note, Vol. I. page 158.



legal debt, upon which a commission of bankruptcy may issue. <i>Ex parte Sutton.</i> - - - - -	Vol. XI.
7. A commission of bankruptcy cannot be taken out upon an equitable debt. - - - - -	XI.
8. Whether the objection to a commission of bankruptcy upon an act of bankruptcy, and a sufficient debt, previous to the existence of the petitioning creditor's debt, could be taken by the bankrupt, as it might by a creditor (subject to the question of notice under the stat. 46 Geo. 3. c. 135) (a), <i>quære.</i> <i>Ex parte Bullock.</i>	XIV.
9. A joint creditor, being the petitioning creditor in a separate commission, entitled to receive dividends, &c. with the separate creditors; not being within the rule, excluding the other joint creditors. <i>Ex parte Ackerman.</i>	XIV.
10. Commission of bankruptcy, relinquished by the petitioning creditor upon obtaining security, superseded: his proof under another commission expunged; and, being an assignee, a new choice directed. The knowledge of one or two individual creditors, if no general communication, did not prevent the effect of the stat. 5 Geo. 2. c. 30. s. 24. <i>Ex parte Paxton.</i> - - - - -	XV.
11. Whether the striking a docket merely could be considered the issuing a commission within the stat. 5 Geo. 2. c. 30. s. 24 (a penal clause), <i>quære</i> (b). - - - - -	XV.
12. Proof in bankruptcy under a security for more than the debt expunged: but security or satisfaction taken after a docket struck, not followed by a commission, though it cannot be retained, and may amount to a contempt, was not within the statute 5 Geo. 2. c. 30. s. 24. The original debt therefore not forfeited (c). <i>Ex parte Browne.</i> - - - - -	XV.
13. An attorney not having delivered his bill according to the stat. 2 Geo. 2. though he cannot bring an action, may be the petitioning creditor in a commission of bankruptcy: but his debt must be afterwards examined. -	XVI.
14. Whether judgment for damages in an action for breach of promise of marriage by relation to the time of the verdict forms a debt, that will support a commission of bankruptcy, issuing, and the act of bankruptcy committed, in the interval, and as to the effect of the certificate upon such a debt, <i>quære.</i> The commission superseded; with the offer of a case (d). <i>Ex parte Charles.</i> - - - - -	XVI.
15. Joint creditor, taking out a separate commission of bankruptcy, may prove, and receive dividends, with the separate creditors; though, as to part, a trustee for another joint creditor; who upon the general rule	

(a) See stat. 6 Geo. 4. c. 16. s. 83.

(b) See the notes, Vol. XV. pages 462, 474. Stat. 6 Geo. 4. c. 16. s. 8.

(c) See the references, Vol. XV. page 474, note. Stat. 6 Geo. 4. c. 16. s. 8.

(d) See the note, Vol. XVI. page 256.

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- could have proved only to affect the certificate, not to receive dividends. *Ex parte Detastet.* - - - XVII. 247
16. Ground of the General Order, that the petitioning creditor shall attend in person at the opening a commission of bankruptcy. - - - - - XVI. 415
17. Useful, that the existence of the petitioning creditor's debt at the time of the bankruptcy should appear on the deposition. - - - - - XVI. 415
18. Order by Lord *Thurlow*, that a petitioning creditor, who has neglected to prosecute a commission of bankruptcy, shall not have another. *Ex parte Masterman.* - XVIII. 298
19. Order for production before commissioners of bankruptcy of a deed of trust, alleged to be an act of bankruptcy: but, if the petitioning creditor knew of, and acquiesced under it, though he did not execute, it will not support the commission. *Ex parte Cawkwell.* - - - XIX. 233
- PLEDGE.**—1. Must be sold; and the excess proved.
1. Bankrupt's property pledged must be sold; and the excess proved as a debt. - - - - - XIX. 231
- POWER.**—1. Bankrupt not compelled by decree to execute.
1. Bankrupt, seised for life, with a general power of appointment, with remainder in default of appointment, to the heirs of his body, cannot be compelled by decree in equity to execute the power for his creditors (a). *Thorpe v. Goodall.* - - - - - XVII. 388. 460
- PREFERENCE.**—1. On application of creditor, ignorant of insolvency, &c.
2. Voluntary in contemplation of bankruptcy.
3. Protected by previous equitable title.
4. In contemplation of bankruptcy void.
5. In contemplation of bankruptcy void against creditors.
6. Settlement of wife's property in case of bankruptcy: distinction as to the bankrupt's.
1. Security, made by a debtor insolvent, his effects under execution, and not two months before bankruptcy, upon a previous application of a creditor, ignorant of those circumstances: the *Lord Chancellor* thought it valid; but permitted the assignees to bring an action. *Ex parte Scudamore.* - - - - - III. 85
2. Delivery of effects in contemplation of bankruptcy to a creditor, though standing perfectly *bonâ fide*, is bad, if voluntary and without pressure. - - - - - III. 88
3. Legal title in contemplation of bankruptcy protected by the previous equitable title. - - - - - XIII. 122
4. Preference in contemplation of bankruptcy however moral the act, void. - - - - - XVIII. 342

(a) See the note, Vol. XVII. page 394.

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5. Settlement on marriage of freehold estates of inheritance and leaseholds for lives and years by a man, not indebted, in trade, or intending it, to the use of himself for life, unless he shall embark in trade, and in the life of his wife become bankrupt; and from his decease or bankruptcy to secure an annuity for his wife; and, subject thereto, for his heirs, executors, &c. on his afterwards engaging in trade and becoming bankrupt void as against his creditors. *Higinbotham v. Holme.* - -
6. Settlement on marriage of the wife's fortune in case of bankruptcy of the husband, though in the form of a bond by him: but as his bond, affecting his property, it is void as against the creditors. *Ex parte Hodgson.*

XIX

XIX.

- PRIVILEGE.** — 1. Against costs forfeited by misconduct.
2. From arrest, proceeding for the purpose of examination.
  3. Not from escape warrant on return from surrender by order.
  4. Whether from arrest in execution after the time expired.
  5. From arrest returning from attending petition for leave to surrender.
  6. Of Parliament.
  7. From arrest on surrender before a public meeting.
  8. From arrest under extent on his examination.

1. A bankrupt, like a pauper, loses his privilege by misconduct: therefore where after two petitions dismissed he presents a third for the same purpose, it will be dismissed with costs; and, if not able to pay them, he must be committed: but the Court will not make an order to restrain him from presenting any more. *Ex parte Shaw.*

II

2. Bankrupt on motion in the bankruptcy discharged from an arrest and detainer; as having been arrested on his way, though with a deviation, *bond fide* for the purpose of examination before the commissioners. *Ogle's Case.* - - - - -

XI.

3. Bankrupt, having escaped from prison, was retaken by the gaoler upon his return from examination, surrendering to the commissioners under the *Lord Chancellor's* order, giving him liberty to surrender after the time prescribed by the statute. Not discharged: nor is the act a contempt. *Ex parte Johnson.* - - -

XIV.

4. As to the jurisdiction to discharge a bankrupt, taken in execution, after the time for his surrender had expired, having obtained an order for a meeting to take his surrender, *quære?* The order of discharge, if made, must be made upon the plaintiff at law, not the gaoler. *Anon.* - - - - -

XV.

5. The privilege of a party, attending his own cause, from arrest extends to a bankrupt on his return from attend-

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ing his petition for leave to surrender after expiration of the time; having deviated no farther than to call on his solicitor to arrange the proper steps for giving effect to the order. *Ex parte Jackson.* - - -

XV. 116

6. Trader, having privilege of Parliament, by not paying money under an order of Court commits an act of bankruptcy by stat. 45 Geo. 3. c. 124 (a). - - -

XVI. 437

7. Protection of commissioners of bankruptcy, granted at a private meeting, on the application of the bankrupt the day after he was served with notice, and before the first public meeting, good. Order on the plaintiff in the action to discharge the bankrupt; and the officer to pay the costs. *Ex parte Wood.* - - - - -

XVIII. 1

8. Protection of a bankrupt from arrest under an extent, while attending the commissioners on the day appointed for his examination, and remaining in another room in the same house during an interval of adjournment on that day, on the general principle of law, protecting a witness. The order to discharge made on the gaoler, not, as in the case of a private creditor, on the party. *Ex parte Russell.* - - - - -

XIX. 163

- PROCEEDINGS.—
1. Not to be used as evidence by strangers.
  2. Under commission superseded produced by order in Chancery in *Ireland*.
  3. In custody of the assignees.
  4. No lien for fees of enrolment.
  5. Under superseded commission produced on trial by order.
  6. Ordered to be deposited in the office.

1. Proceedings under a commission of bankruptcy in the Secretary's office not permitted to be used as evidence in actions by strangers unconnected with the commission.

VIII. 314

2. The proceedings under a commission of bankruptcy ordered to be produced at the hearing of a cause in the Court of Chancery in *Ireland*, with a view to evidence from the bankrupt's examination; but not of course.

*Ex parte Bernal.* - - - - -

XI. 557

3. In bankruptcy the assignees, not the commissioners, are entitled to the custody of the proceedings. *Ex parte Scarth.* - - - - -

XV. 293

4. No lien on the proceedings under a commission of bankruptcy for the fees of enrolment. *Ex parte Saunderson.*

XIX. 161

5. Commission of bankruptcy superseded, and an action brought: the *Lord Chancellor* ordered the commission and proceedings to be delivered by the solicitor to the secretary, and by him to the associate, to be produced on the trial; with liberty to inspect and copy. Such an order properly refused by a Judge. *Ex parte Warren.*

XIX. 162

6. Proceedings in bankruptcy ordered to be deposited in the office, sometimes with a view to a criminal prosecution, as for a conspiracy; so, if the bond is assigned: which remedy, as being limited to the penalty, is less beneficial than an action on the case. - - -

XIX.

- PROOF.** — 1. Must be tendered before petition.  
 2. Expunged on petition, not bill.  
 3. Joint under separate commission.  
 4. Not on bill sold.  
 5. Cross paper.  
 6. Not on indemnity to surety for instalments not due till after bankruptcy.  
 7. Joint under separate commission.  
 8. On collateral securities.  
 9. Not on bond not forfeited at the bankruptcy.  
 10. Cross paper.  
 11. Damages liquidated and unliquidated.  
 12. Under special circumstances.  
 13. } On collateral securities.  
 14. }  
 15. Dividends declared must be deducted.  
 16. By holder against acceptor for drawer's benefit.  
 17. Against overseer of poor.  
 18. For lost bill with indemnity.  
 19. Joint under separate commission.  
 20. By separate creditor, giving up joint security.  
 21. Not under covenant to convey when requested, and no request; unless a penalty.  
 22. Under articles settling wife's property from husband's bankruptcy, and his covenant to give bond on the same trusts.  
 23. Joint under separate commission.  
 24. Not on debt payable at uncertain time.  
 25. On loan: the positive contract failing by the bankruptcy.  
 26. Against vendee, to be paid by bills, for deficiency beyond dividends on bills not indorsed by him.  
 27. Under agreement on marriage to invest in stock for an annuity, payable after husband's decease.  
 28. Reduced by mortgage, &c. Effect of indorsement to secure a greater debt. Distinction as to accommodation paper.  
 29. Under covenant on marriage upon false representation.  
 30. Between bankrupts, subject to liability on distinct transaction.  
 31. Refused for declining answer as tending to criminate him.  
 32. } As to costs of verdict and judgment after bank-  
 33. } ruptcy, or an intervening bankruptcy.  
 34. Joint waved, and separate permitted; not having received, nor disturbing, dividend.  
 35. Not on contingent debt.

36. Not by joint creditor to receive dividends under separate commission, if a solvent partner.
37. Joint under separate commission.
38. Not under guaranty; being contingent.
39. For liquidated damages on compromise of action for seduction. Distinction as to *præmium pudoris*.
40. Joint under separate commission.
41. Under covenant on marriage on request to transfer stock.
42. Joint under separate commission.
43. Under superseded commission admitted.
44. By assignee of judgment for surety for a debt paid after bankruptcy.
45. On all securities from third persons.
46. Drawer and acceptor the same persons as distinct firms.
47. Under consignment with authority to sell, to reimburse advances, not extended beyond balance of original advance to cover sale to consignor.
48. Right of joint creditors under separate commission.
49. Of debt, originally contingent, become absolute.
50. On bill reduced by previous payment, &c.

1. Petition to prove a debt in bankruptcy irregular; because the creditor did not go before the commissioners, till after it was presented; and because brought to hearing without stating what passed before them. *Ex parte Wright*. - - - - - II. 41
2. After judgment by default in an action upon a dividend under a commission of bankruptcy the assignees filed a bill for discovery and to have the proof of the debt expunged: demurrer allowed; the course being by petition. *Clarke v. Capron*. - - - - - II. 666
3. Upon petition of joint creditors to be admitted to prove under a separate commission it was ordered, that they shall be admitted; but not to receive a dividend; and that the dividend shall be reserved, till an account is taken of what they have or might have received from the partnership effects. *Ex parte Elton*. - - - III. 238
4. A person, giving cash for a bill without the indorsement of the person from whom he takes it, cannot prove it under his bankruptcy. *Ex parte Shuttleworth*. - III. 368
5. Cross paper between two houses; both of which became bankrupt: as between the two estates no proof can be had in respect of the bad paper, or the excess of damage eventually sustained on that account. *Ex parte Walker*. - - - - - IV. 373
6. Bond of indemnity to a surety for payment of instalments, the first of which was not due till after the bankruptcy of the principal, cannot be proved, though payable before the bankruptcy. - - - - - IV. 385

7. Upon the proof of a joint debt under a separate commission of bankruptcy no dividend can be taken, till the separate creditors have received 20s. in the pound. *Ex parte Abell.* - - - - - IV.
8. A bill indorsed by the drawer as a farther security on discounting another bill for him: the drawer and acceptor of the bill so indorsed becoming bankrupts, the proof against the estate of the acceptor, not the dividend only, was restrained to the original debt. (See No. 13. 14.) (a). *Ex parte Bloxham.* - - - - - V
9. Upon a bankruptcy proof of debts under bonds securing an annuity was rejected on the ground, that a bill, accepted for the arrear, not being dishonoured till after the bankruptcy, the bonds were not forfeited at the bankruptcy. The bonds being void under the Annuity Act, there being no enrolment of one, and the consideration of the other not being truly stated, petition to be admitted a creditor for the sums advanced was dismissed on the ground, that, the petitioner having insisted on his security at the date of the commission, it was not the same debt. *Ex parte James.* - - - - - V
10. Cross paper, dishonoured on each side; both parties being bankrupt: as between the two estates the proof was confined to the cash balance without regard to the dishonoured bills. *Ex parte Earle.* - - - - - V
11. Though unliquidated damages cannot be proved under a commission of bankruptcy, yet, if the demand is partly of that nature, and partly liquidated, as the difference of price upon a re-sale, the creditor, having a security, may apply it first to the former, then to the latter; and may prove the residue. *Ex parte Hunter.* VI
12. A. to discharge a debt due from him to B., procures his banker C. to direct his correspondent and partner D. to accept a bill drawn by B. Before the bill was due, C. and D. became bankrupt; C. being indebted to A. more than the amount of the bill, B. proved against the estate of D.; but afterwards received the whole from A.—A. not having proved against the estate of C. in respect of the bill is entitled to stand in the place of B. against the estate of D.; whose proof, having been expunged, was re-instated for the benefit of A. *Ex parte Matthews.* - - - - - V
13. } Creditor having securities of third persons to a  
14. } greater amount than the debt may prove and receive dividends upon the full amount of the securities to the extent of 20s. in the pound upon the actual debt. *Ex parte Bloxham.* - - - - - VI. 44

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(a) This point being brought on afterwards before Lord Eldon, Chancellor, this decision over-ruled. *Ex parte Bloxham*, 11th August, 1801. 27th January, 1802. Vol. VI. 449



15. Dividends declared upon a bill of exchange, though not received, must be deducted from the proof by the indorsee under another commission of bankruptcy. *Ex parte Leers.* - - - - - VI. 644
16. The holder of a bill of exchange may be compelled to prove under the bankruptcy of the acceptor for the benefit of the drawer. - - - - - VI. 734
17. Proof under a commission of bankruptcy against an overseer of the poor in respect of money in his hands at the time of his bankruptcy before the period of accounting. *Ex parte Exleigh.* - - - - - VI. 811
18. Proof allowed under a commission of bankruptcy in respect of a bill alleged to be lost: but the most extensive indemnity to be given, and to be settled by the commissioners. *Ex parte Greenway.* - - - - - VI. 812
19. Joint creditors admitted to prove under a separate commission for the purpose of keeping separate accounts, and assenting to or dissenting from the certificate; but not to receive dividends with the separate creditors. *Ex parte Clay.* - - - - - VI. 813
20. Separate creditors, who had taken a joint security, permitted on giving it up to resort under a commission of bankruptcy to their original debts. *Ex parte Lobb.* - - - - - VIII. 592
21. Covenant on marriage within seven years, or when requested, to convey lands of a given value in particular counties. Under a bankruptcy after the expiration of the seven years, and no request made, proof not admitted upon the covenant, unless secured by a penalty. *Ex parte Mare.* - - - - - VIII. 335
22. Though a bond by a husband to pay a sum in the event of his bankruptcy or insolvency to trustees for the purposes of settlement cannot stand against the creditors, the property of the wife may be limited to the husband, until he becomes bankrupt, &c. and from that event to his wife and children; and where in articles for such a settlement, the husband covenanted to give a bond for £5000 upon the same trusts, and had received all her fortune without making any settlement, proof was admitted under his bankruptcy, not only for the amount of her property, agreed to be settled, but the £5000, or so much as the value of the property of the wife would extend to beyond the sum agreed to be settled. *Ex parte Cooke.* - - - - - VIII. 353
23. Separate commission on the petition of a joint creditor. The joint creditors permitted to prove for the purpose of voting in the choice of assignees and taking dividends, provided they pay the separate creditors. *Ex parte Chandler.* - - - - - IX. 35
24. A debt payable at a future uncertain period, as within three months after the decease of two obligors in a



- bond or the survivor, not proved in bankruptcy (a).  
*Ex parte Barker.* - - - - - IX.
25. Loan upon a parol agreement to give security to replace stock by a given day. The positive contract failing by an intervening bankruptcy, proof may be made in respect of the contract implied by law from the loan.  
*Ex parte Coming.* - - - - - IX.
26. Goods sold ; to be paid for by bills at three months. The drawers and acceptors becoming bankrupt before the bills were due, the vendors, having received dividends under their commissions, entitled to prove under a commission against the vendees, who had not indorsed the bills, the deficiency as a debt : till that shall be ascertained, a claim ; and dividends reserved for the whole.  
*Ex parte Blackburn.* - - - - - X.
27. Agreement on marriage by the husband as speedily as may be to settle £40 a-year upon his wife, to be paid from his decease ; a sum of money to be invested in stock for the purpose of raising that annual sum ; the dividends for the husband for life : the capital for the issue, &c. Under the husband's bankruptcy proof allowed for the wife and children for £800 ; amounting to a covenant to pay that sum upon the marriage ; and upon the principle of arrears of an annuity due before the bankruptcy. *Ex parte Granger.* - - - - - X.
28. Ground of reducing in the first instance the proof in bankruptcy in cases of mortgage and deposit of securities. As to the effect of indorsement to secure a debt to a greater amount, *quære?* Distinction as to accommodation paper : the proof not to be expunged ; but to be held for the benefit of the person paying in nature of a surety. - - - - - X.
29. Proof by the widow of a bankrupt under an engagement by the marriage settlement to settle money, which he falsely represented himself to possess. *Ex parte Gardner.* - - - - - XI.
30. A. and B. bankrupts. Proof in respect of a cash balance due from A. to B. but the dividends retained, to re-imburse the estate of A. what it should over-pay upon a distinct transaction ; an advance of bills from A. to B. ; some of which were dishonoured. *Ex parte Metcalf.* - - - - - X.
31. Proof under a commission of bankruptcy refused : the party, claiming the debt, being charged by the examination of the bankrupt with the receipt of money ; and refusing a disclosure as to the receipt and application, on the ground, that it might tend to criminate him.  
*Ex parte Symes.* - - - - - XI.
32. Verdict and judgment after bankruptcy in an action previously brought ; whether for an antecedent debt by contract or mere damages in tort, the costs cannot be proved as a debt under the commission. Whether in

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(a) See the note, page 115.

- the case of bankruptcy between verdict or nonsuit and judgment they can be proved, and as to the effect of the certificate to discharge in such cases, *quære?* *Ex parte Hill.* - - - - - XI. 646
33. Costs, incurred after bankruptcy, discharged by the certificate, as having relation to the original debt, yet not capable of being proved under the commission. - - - - - XI. 649
34. Creditors, having proved under a joint commission of bankruptcy upon a joint and several obligation, but not having received a dividend, permitted to wave their proof, and to prove against the separate estate; not disturbing any dividend already made. *Ex parte Beilby.* XIII. 70
35. No proof in bankruptcy under a written undertaking to pay on one month's notice the debt of another; notice not being given before the bankruptcy; and the debt therefore contingent (a). *Ex parte Minet.* - - - - - XIV. 189
36. A joint creditor not admitted to prove under a separate commission of bankruptcy for the purpose of receiving dividends with the separate creditors; though there was no joint property: there being a solvent partner. *Ex parte Kensington.* - - - - - XIV. 447
37. Proof by joint creditors under a separate commission; there being no joint estate or solvent partner. *Ex parte Sadler.* - - - - - XV. 52
38. Under a guaranty the debt is contingent only: therefore a debt, accrued by default after the bankruptcy of the surety, cannot be proved under the commission (b). *Ex parte Gordon.* - - - - - XV. 286
39. Proof in bankruptcy under promissory notes for liquidated damages by compromise of an action for seduction, *per quod servitium amisit*. Distinction as to a security *præmium pudoris.* *Ex parte Mumford.* - - - - - XV. 289
40. Joint creditors admitted to prove under a separate commission of bankruptcy for the purpose of assenting to, or dissenting from, the certificate; not to receive dividends with the separate creditors. *Ex parte Taitt.* - - - - - XVI. 193
41. Proof in bankruptcy under a covenant by the bankrupt in consideration of marriage immediately after the marriage, or whenever afterwards requested by the trustees, to transfer £2000 stock, alleged to be standing in his name; though not the fact: but the specific time of the request must be ascertained. *Ex parte Campbell.* - - - - - XVI. 244
42. Joint creditors cannot prove under a separate commission of bankruptcy for the purpose of receiving dividends, but only to assent to or dissent from the certificate. An account and application of the joint estate is directed on the application of any joint creditor: the residue to be distributed according to the respective interests of the partners. - - - - - XVII. 209

(a) See the note, page 190. Stat. 6 Geo. 4. c. 16. s. 56.

(b) See the note, page 288. Stat. 6 Geo. 4. c. 16. s. 56.

- 43. Two commissions of bankruptcy having issued, and one being superseded, proofs under that ordered to be received under the other. - - - - - XVII.
- 44. Acceptor without effects, for the accommodation of the drawer, being compelled on his bankruptcy to pay the bill (before the stat. 49 Geo. 3. c. 121) obtained judgment in an action for the amount, with interest and costs. The assignee of that judgment was admitted under the Act, which passed in the interval, to prove the original debt, not disturbing any dividends already made: the judgment being considered as a security for the original debt; which maybe proved; and would be barred by the certificate. *Ex parte Lloyd.* - - - XVII.
- 45. Creditor's right in bankruptcy to prove and avail himself of all collateral securities from third persons, to the extent of 20s. in the pound. *Ex parte Parr.* - - - XVIII.
- 46. Bills drawn and accepted by the same persons, as constituting distinct firms: proof against the acceptor without deducting the value of a security from the drawer. *Ex parte Parr.* - - - XVIII.
- 47. Consignment with authority to sell, to re-imburse advances on the consignment; any deficiency to be made good: and the surplus, if any, restored. Part of the goods being sold to the consignors, proof under their bankruptcy was limited to the balance of the original advance. *Ex parte Thompson.* - - - XVIII.
- 48. Right of joint creditors under a separate commission of bankruptcy to an account and application of joint effects; limited as to the separate estate to the surplus, not voting in the choice of assignees. - - - XVIII.
- 49. Debt, absolute by the happening of the contingency before bankruptcy, proveable. - - - XIX.
- 50. Proof in bankruptcy upon a bill reduced by the previous part-payment or declaration of dividend from the estate of another party; unless in a special case; as where it was pending a petition against the rejection of the proof for the whole amount; which decision of the commissioners was over-ruled. *Ex parte the Royal Bank of Scotland.* - - - XIX.

RE-HEARING.—1. Limit of time.

- 1. Limit of time to re-hear in bankruptcy proposed. *Ex parte Roffey.* - - - XIX.

RELATION.—1. } Severity mitigated.  
2. }

- 1. Severity of the relation under the bankrupt law mitigated by stat. 46 Geo. 3. c. 135. - - - XIII.
- 2. Severity of the relation under the bankrupt law mitigated by stat. 1 Jam. 1. c. 15. s. 4., stat. 21 Jam. 1. c. 10. s. 14., stat. 19 Geo. 2. c. 32., stat. 46 Geo. 3. c. 135. XIII.

- REPUTED OWNER.**—1. Transfer of bill of sale of ship, not at sea.—Registry Act.  
 2. As between partners.  
 3. }  
 4. } Debts generally within the statute:  
 5. } mortgages not.  
 6. }  
 7. }  
 8. Short bills not within the statute.  
 9. Possession under title not within the statute.

1. *Quære*, whether shares of a ship not at sea are within 21 Jac. 1. c. 19. s. 10, 11, or whether transfer of bill of sale is sufficient delivery of possession: Also, whether it is affected by the Registry Act. *Ex parte Stadgroom.* - - - - - I. 163
2. Assignees under separate commission cannot come upon joint estate for a sum brought into the partnership beyond his share; for creditors rely on the ostensible state of the fund. - - - - - I. 167
3. Debts are within the stat. 21 Jac. 1. c. 19. s. 11. - - - VI. 128
4. Though debts, in general, are within the stat. 21 Jac. 1. c. 19. s. 11. mortgages of real estate, whether original, or by assignment, and though also secured by bond or covenant, are not. *Jones v. Gibbons.* - - - IX. 407
5. Requisites, equivalent to delivery of chattels personal, preventing the effect of the stat. 21 Jac. 1. c. 19. s. 11, as to debts: viz. assignment; delivery of the security, if any; and notice to the debtor; the last probably required, as otherwise the debtor may safely pay the original creditor. - - - IX. 410
6. } Debts within the stat. 21 Jac. 1. c. 19. s. 11. - - - { XI. 7  
 7. } XIV. 187
8. The stat. 21 Jac. 1. c. 19. s. 11. not applicable to bills in the hands of a banker written short, or sent for a particular purpose: the trust accounting for the possession; being considered as goods in the hands of a factor, with a single distinction; that he cannot pledge; but if the bills are dealt with before bankruptcy, the money cannot be followed; as, if dealt with afterwards, it may. *Ex parte Pease.* - - - XIX. 25
9. Furniture, &c. in possession of a bankrupt according to the title under the trust of a will did not pass to the assignees under stat. 21 Jac. 1. c. 19. s. 11. *Ex parte Martin.* - - - XIX. 491

- SET-OFF.**—1. Separate against joint debt.  
 2. Not against bankrupt's acceptance, indorsed before, and taken up after bankruptcy.  
 3. Not by part-owners of ship against separate debts to each.  
 4. Separate against joint debt.

**SET-OFF.**—5. Acceptance due after drawer's bankruptcy.

6. Not of costs ordered, but not taxed at bankruptcy of the party to receive.

7. Debt of bankrupts to one partner separately against joint debt of him and his partner to secure the separate debt of the former.

1. Separate commission of bankruptcy against one partner: the other paid the joint debts: a debtor to the partnership, being also a separate creditor of the bankrupt, was allowed upon petition to set-off against the bankrupt's share of the joint debt, and to prove the residue of his separate debt; the solvent partner consenting to receive his share. *Ex parte Quintin* (a). - - - III

2. Acceptor becoming bankrupt, the petitioner, having indorsed before the bankruptcy, took up the bill: he may prove; but cannot set-off a debt due from him to the estate. *Ex parte Hale*. - - - III

3. Part-owners of a ship cannot set-off their proportions of a debt to the bankrupt on that account against the debts due by the bankrupt to them severally. *Ex parte Christie*. - - - X

4. Set-off in bankruptcy of a separate debt from the estate against a joint debt to it; and liberty to prove the balance under the commission. *Ex parte Hanson*. - XII

5. Acceptance, not due till after the bankruptcy of the drawer, is capable of set-off within the clause of the act as to mutual credit. *Ex parte Wagstaff*. - XIII

6. Costs ordered to be paid, but not taxed until after the bankruptcy of the person to receive them, cannot be set-off by the party, from whom they were due, proving a debt under the commission. *Ex parte Thomas*. - XV

7. Set-off in bankruptcy of a debt of the bankrupt to one partner separately against a joint debt of him and his partner, on their bond, to secure the separate debt of the former. *Ex parte Hanson*. - XVIII

**SHIP OWNER.**—1. Not subject to the bankrupt law.

1. The owner of a share in a ship is not in that character subject to the bankrupt laws. *Ex parte Bowes*. - IV

**STATUTE OF LIMITATIONS.**—1. } Prevails in bankruptcy.  
2. }

1. A debt, which could not be recovered in an action against a plea of the Statute of Limitations, nor in equity by analogy to it, not admitted under a commission of bankruptcy. *Ex parte Dewdney*. - XV

2. Order (*Ex parte Dewdney*, vol. xv. 479), giving effect to the Statute of Limitations in bankruptcy, affirmed on re-hearing. *Ex parte Roffey*. - XIX

(a) See the note, Vol. III. page 248.

- Stock.—1. } Loan, secured by bond forfeited, proved.  
 2. }  
 3. To be replaced on demand.

1. Bond, upon a loan of stock, to secure a re-transfer, and the dividends in the mean time. The obligor becoming a bankrupt after the day mentioned in the condition, proof was admitted for the amount of the dividends due before the bankruptcy and the value of the stock at the date of the commission, by analogy to the case of annuities. *Ex parte Day.* - - - - -

VII. 301

2. No proof under a bond to replace stock and pay the dividends; unless forfeited either as to the capital or dividend before the bankruptcy. *Ex parte King.* -

VIII. 334

3. Agreement to replace stock upon demand. If demand is made before the bankruptcy, the price may be proved.

VIII. 337

Stock-HOLDER.—

1. Holders of stock in public companies not liable to the bankrupt law in that character merely. - - - -

XV. 357

- SUPERSEDING.—1. Not by petitioning creditor alone.  
 2. Though two creditors could not be found.  
 3. General Order.  
 4. On several grounds.  
 5. } Not till the writ issues.  
 6. }  
 7. With notice of adjudication quashed.  
 8. Not on affidavit of solvency, &c.  
 9. Not by petitioning creditor alone.  
 10. Of country commission under General Order.  
 11. Not before surrender.  
 12. Not without consent, though some abroad and not to be found.  
 13. Not for fraud in the case of purchases.  
 14. Not before surrender.  
 15. } On fraud, &c. with costs against solicitor;  
 16. } if abuse equal to a contempt.  
 17. Not for want of act of bankruptcy before docket.  
 18. Provision for costs without assigning bond.  
 19. After certificate fraudulent, unless laches.  
 20. Not by the bankrupt on security to petitioning creditor.  
 21. After acquiescence not without trial.  
 22. On prior act of bankruptcy: whether competent to the bankrupt.  
 23. Whether of second commission against uncertificated bankrupt at his instance.  
 24. By consent.  
 25. Discretion as to commission against uncertificated bankrupt.  
 26. By bankrupt uncertificated under prior commission.  
 27. Not while under commitment.  
 28. Not before surrender.

**SUPERSEDING.**—29. To defeat prosecution under circumstances.  
 30. While under commitment.  
 31. By consent.  
 32. Discretionary.

1. Creditor upon receiving his debt superseded a commission of bankruptcy without application to the Court: ordered to refund. *Ex parte Thomson.* - - - - - I
2. Bankruptcy superseded; all the creditors being paid, and consenting, except two, who could not be found: but their securities were delivered up with receipts upon them, and their signatures proved. *Ex parte King.* - II
3. General Order, that commissions of bankrupt to be executed in *London* shall be supersedable for want of prosecution at the end of fourteen days, and those not to be executed in *London* at the end of twenty-eight days, from the date; and that one day more shall elapse before the order for the *supersedeas*; and the application, first made in that day by any other attorney for a *supersedeas*, and a new commission, shall be preferred to that of the attorney, who sued out the former. - II
4. Commission of bankruptcy superseded on the grounds, that the act of bankruptcy was near eleven years before, and perfectly notorious; and that it was founded upon the debt of a creditor, who must of necessity gain the whole direction; and the debt being matter of account disputed by the bankrupt in an action, in which he swore to a debt due to him, and by filing a bill in equity. *Ex parte Bowes.* - - - - - IV
5. A commission of bankruptcy supersedable under Lord *Loughborough's* order, dated the 26th of June, 1793, is not actually superseded, till the writ of *supersedeas* issues; and therefore having been opened, and the bankruptcy adjudged, after the order made for the *supersedeas*, but before the writ sealed, notice of the application having been according to the practice in the office sent to the solicitor, the commission was supported. *Ex parte Leicester.* - - - - - VI
6. An order for a *supersedeas* has no effect till the writ issues. *Ex parte Layton.* - - - - - VI
7. Adjudication of bankruptcy on *Saturday* too late for the *Gazette*. On *Monday* another solicitor having notice obtained a *supersedeas* under the General Order, 26th June, 1793: both the bankruptcy and the *supersedeas* appeared in the *Gazette* on *Tuesday*. The *supersedeas* was quashed; and a *procedendo* issued. *Ex parte Ellis.* VII
8. Petition to supersede a commission of bankruptcy, before any meeting, upon affidavits of the solvency of the bankrupt, that he never committed an act of bankruptcy, and did not owe the petitioning creditor £100, refused: nor would the *Lord Chancellor* direct an issue. *Ex parte Stokes.* - - - - - VII



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9. Commission of bankruptcy an execution for all creditors. The petitioning creditor therefore cannot receive his debt, and the commission be superseded, while the others are unsatisfied. - - - - - VII. 408
10. *Supersedeas* of a country commission of bankruptcy under the General Order, 26th June, 1793, for want of notice of the adjudication; though from the distance impossible by course of post. *Ex parte Henderson.* - - - VII. 137, n.
11. A bankrupt, who has neglected to surrender, cannot supersede his commission with the consent of his creditors without first obtaining leave to surrender. *Ex parte Jones.* - - - - - VIII. 328
12. Though 20s. in the pound have been paid under a commission of bankruptcy, and the certificate obtained, the commission cannot be superseded without consent of the creditors upon the circumstance, that some are abroad, and not to be found. *Ex parte Jackson.* - - - VIII. 533
13. A commission of bankruptcy not superseded for fraud, where purchases have been made under it. *Ex parte Edwards.* - - - - - X. 104
14. A commission of bankruptcy cannot be superseded, before the bankrupt has surrendered. *Ex parte Jones.* XI. 409
15. Commission of bankruptcy superseded with costs for fraud and misconduct. The solicitor charged with costs; not as having taken the creditor's account of the amount of his debt, without sufficient inquiry, being pressed by an execution; but as having by a false description obtained the docket contrary to the General Order of Lord *Rosslyn*, requiring in a country commission two barristers, &c.; which order is upon application in a proper case dispensed with. *Ex parte Conway.* - XIII. 62
16. Commission of bankruptcy superseded with costs: the bond to be assigned; and the proceedings to be impounded. The solicitor not charged with the costs; unless guilty of such an abuse as amounts to a contempt; in which case he might even be struck off the roll; but, the charges being denied, the creditor must bring an action against him. *Ex parte Heywood.* - XIII. 67
17. Commission of bankruptcy not superseded for want of an act of bankruptcy previous to striking the docket: the affidavit of belief, that the party is a bankrupt at that time, not being required by the statute; though according to the practice. *Wydown's Case.* - XIV. 80
18. Where the conduct of the petitioning creditor under a commission of bankruptcy, superseded, though improper, in swearing to a bankruptcy, which he cannot establish, was not such as to justify an assignment of the bond, upon which the whole penalty must be recovered, the *Lord Chancellor* would have ordered it to stand as a security for the costs, to be ascertained in an issue: but, the creditor having become a bankrupt, to obviate



the objection, that the costs, so ascertained, would be a debt liquidated after the bankruptcy, a specific sum was named. *Ex parte Rimene.* - - - - -

XIV. 6

19. Commission of bankruptcy may be superseded after the certificate obtained; as where fraudulently taken out, at the instance of the bankrupt: but where the application, which might have been made earlier, was delayed five years, and was founded upon objections to the trading and the petitioning creditor's debt, which must have been tried at law, the petition was dismissed.

*Ex parte Moule.* - - - - -

XIV. 6

20. A bankrupt could not supersede his commission by impeaching the petitioning creditor's debt on the ground of a security taken privately: the remedy under the stat. 5 Geo. 2. c. 30. s. 24. being given to some other creditor. *Ex parte Kirk.* - - - - -

XV. 4

21. Commission of bankruptcy after a considerable acquiescence by the bankrupt not superseded without a trial at law. - - - - -

XV. 4

22. Distinction between the application of a creditor and that of the bankrupt to supersede the commission upon a prior act of bankruptcy, &c. Whether that is competent to the bankrupt, *quære.* - - - - -

XV. 46

23. Though a second commission against a bankrupt, uncertificated under a former commission, is bad at law, whether the *Lord Chancellor* will at the instance of the bankrupt supersede the latter, if the assignees under the former will not interfere with the property, *quære.* Notice to them directed. *Ex parte Rhodes.* - - - - -

XV. 59

24. Commission of bankruptcy supersedable at any time after the first meeting upon consent of all the creditors, who had proved (a). *Ex parte Duckworth.* - - - - -

XVI. 41

25. Discretion of the Great Seal to supersede a second commission against an uncertificated bankrupt, and even, under circumstances, on the petition of the bankrupt; or not. The petition for that purpose of the petitioning creditor under the first commission dismissed with costs, under the circumstances: fifteen years since the first commission; during the last seven of which the bankrupt, who was his son-in-law, was permitted to carry on trade in another place. *Ex parte Lees.* - - - - -

XVI. 4

26. Circumstances, under which a bankrupt uncertificated might petition to supersede a second commission against him. - - - - -

XVI. 4

27. Bankrupt cannot supersede his commission with consent of all the creditors, while under commitment by the commissioners. (See No. 30.) *Ex parte Bean.* - - - - -

XVII.

28. Bankrupt cannot supersede his commission before surrender. - - - - -

XVII.

(a) See the note, Vol. XVI. page 417.

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29. Commission of bankruptcy superseded, to defeat a prosecution for omitting to surrender under circumstances of erroneous advice, no fraud, and another commission issued proceeding. *Ex parte Lavender.* - - - XVIII. 18
30. Bankrupt under commitment may petition to supersede the commission. (See No. 27.) *Ex parte M'Gennis.* XVIII. 289
31. Commission of bankruptcy not superseded without consent of all the creditors, who had proved, certified by the commissioners, and affidavit of the bankrupt's confirmation of all purchases under the commission; consent of creditors, who had received 20s. in the pound, not dispensed with. *Ex parte Milner.* - - - XIX. 204
32. Discretionary power of superseding a commission of bankruptcy. *Ex parte Hodgson.* - - - XIX. 291

SURETY.—1. Right, having paid to the extent of his engagement.

2. Restrained from proceeding at law.

1. Surety for indemnity to a limited amount, having paid to the extent of his engagement, entitled to dividends upon proof by the creditor under the bankruptcy of the principal debtor; subject (*Ex parte Turner*, vol. iii. 343) to a deduction of the proportion of dividend upon the residue of the debt proved, beyond that, for which the surety was engaged, supposing that expunged. Surety not entitled to the benefit of proof against other estates upon a distinct security. *Paley v. Field.* - XII. 435
2. Bill, after proof under a commission against the acceptor, was paid by the drawer; who, after a dividend having arrested the bankrupt for the balance, and being also a surety for him on another bill, was ordered to discharge him; and restrained from lodging any detainer; under the stat. 49 Geo. 3. c. 121. s. 8 and 14. *Ex parte Lobbon.* - - - XVII. 334

SURPLUS.—1.)

2.) Subsequent, not compound, interest.

3.)

4. Liable to the contribution formerly.

5. Liable to surety.

6. Of separate estate liable to joint debts before interest.

7. Under joint commission interest in preference to a debt from separate to joint estate.

8. Bankrupt's right to petition.

1. Upon a bankruptcy there being a surplus after dividing to the amount of the whole principal with interest to the suing out the commission, subsequent interest ordered on petition of bond creditors, saving just allowances; and commissioners might give it without order; and need stop at nothing but want of assets. But no compound interest allowed. *Ex parte Morris.* - I. 32



2. Creditors of bankrupt entitled to interest, if a surplus.	Vol. I.
3. In case of a surplus coming to a bankrupt, creditors have a right to interest, wherever there is a contract for it, appearing either on the face of the security or by evidence. <i>Ex parte Mills.</i>	II.
4. Where debts did not carry interest by the contract, the Court made the bankrupt pay the contribution out of the surplus (1739).	II.
5. A surety admitted under the bankruptcy of his principal as to all recovered against him and all his costs; there being a surplus.	II.
6. Separate creditors, having received 20s. in the pound, are not entitled to interest out of the surplus of the separate estate, until the joint creditors are paid 20s. in the pound. <i>Ex parte Clarke.</i>	IV.
7. Under a joint commission of bankruptcy the rights of the creditors to interest subsequent to the date of the commission in the case of a surplus preferred to a debt from the separate to the joint estate; upon the principle, that neither the partnership nor the individual debtor can claim in competition with the creditors. <i>Ex parte Reeve.</i>	IX.
8. Bankrupt's right to petition in respect of his interest in the surplus.	XVIII.

- SURRENDER.—1. Prevented by default of the commissioners.  
2. Time enlarged.  
3. }  
4. } After the time.  
5. }  
6. }

1. Bankrupt was prevented from surrendering, because the commissioners did not attend at the day: on petition of the commissioners another day was appointed. The Court blamed their conduct; and said, the petition ought to have been by the bankrupt. <i>Ex parte Grey.</i>	I.
2. Order to enlarge the time for a bankrupt's surrender can be obtained only on the application of the bankrupt himself by affidavit, or the assignees. One instance to the contrary under very special circumstances. <i>Fuller's Case.</i>	X.
3. Order in bankruptcy to commissioners to take the surrender under circumstances, that prevented it in time. <i>Ex parte Higginson.</i>	XII.
4. The <i>Lord Chancellor's</i> order, giving a bankrupt liberty to surrender after the time, prescribed by the Act of Parliament, is not mandatory upon him: and gives him no protection: except as it may shew the favourable inclination of the <i>Lord Chancellor</i> ; and by not surrendering he does not incur a contempt.	XIV.

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5. Effect of the *Lord Chancellor's* order, after expiration of the time for surrender of a bankrupt: authorizing, not compelling, the commissioners to take the examination; and shewing the *Chancellor's* opinion, that it is not fit, that he should be criminally prosecuted. *Anon.* XV. 1
  6. Effect of the *Lord Chancellor's* order permitting a bankrupt to surrender after expiration of the time; not protecting him from a prosecution. - - - - XV. 119
- TRADING.—1. During infancy not sufficient.  
2. Small, if general, sufficient.
1. Commission of bankruptcy cannot be supported by trading during infancy. - - - - XIV. 603
  2. Trading in a very small degree will sustain a commission of bankruptcy; if sufficient for the inference of an intention to deal generally. - - - - XIV. 603
- UNDERWRITER.—1. Not subject as such before 5 Geo. 4.
1. An underwriter, merely in that character, cannot be a bankrupt(a). *Ex parte Bell.* - - - - XV. 355
- USURY.—1. Distinction in bankruptcy and equity.
1. Distinction between the jurisdictions in equity and in bankruptcy in setting aside securities affected by usury. In bankruptcy the party is not, as in the other case, left a creditor for what was actually advanced. - - IX. 84
- WIFE.—1. } Equity on her property.  
2. }  
3. Stock in her name recovered by assignee.  
4. }  
5. } Equity on her property.  
6. }  
7. Settlement of her property on bankruptcy valid.
1. Assignees of bankrupt, taking his wife's fortune out of the Court, must make a provision for her. They consented to give her half. *Brown v. Clark.* - - - - III. 167
  2. Assignees of a bankrupt, defendants in respect of an interest in his wife, cannot take it without making a provision for her. *Freeman v. Parsley.* - - - - III. 421
  3. Assignees of a bankrupt recovered in an action against the Bank stock, standing in the name of the wife. - - III. 620
  4. Assignees of a bankrupt, claiming property in right of his wife, must make provision for her. *Lumb v. Milnes.* V. 517
  5. Assignees under a commission of bankruptcy are in the place of the bankrupt with reference to the equitable interest of his wife. - - - - XI. 17
  6. Assignees of a bankrupt are entitled to the equitable interest for the life of his wife, as well as a capital sum, subject to the equity, requiring a provision for her out of it. - - - - XI. 26

(a) See the note, Vol. XV. page 358.

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7. Settlement, previous to marriage, of money, the property of the wife, upon the event of the husband's bankruptcy, valid; and part, being lent to the husband upon his bond under a power for that purpose, was proved under the commission. *Ex parte Hinton*. - - -

XIV.

See *Alien* (*Enemy* 5.) *Annuity* 17. 22. *Assets* 43. *Assignment* 1. 2. *Attorney and Solicitor* (*Attorney and Client* 9.) *Bail* 4. *Baron and Feme* 24. 27. 56. 69. *Bill of Exchange*. *Bond* 5. 10. *Chattel* 4. *Contingent Interest* 1. *Contract* (*Illegal* 1.) *Demurrer* 1. *Devise* 30. *Dower* 6. *Evidence* (*Interest* 5.) *Fraud* 9. *General Order in Bankruptcy*, Vol. VI. 578. *Insolvent Act* 1. *Interpleader* 17. *Jurisdiction* 14. *Landlord and Tenant* 32. 33. *Lien* 5. 6. 7. 14. 21. *Limitations* (*Stat. of*) (*Time.*) *Lunacy* 13. *Mortgage* (*Tacking* 2.) *Notice* 3. 13. *Partner* 9. 15. 19. 22. 23. 29. 36. 40. *Pleading* (*Demurrer* 13.) *Practice* 13. 22. 100. 101. 110. 236. *Prerogative* 1. *Principal and Surety* 6. 8. 12. 13. *Privilege* (*Arrest* 2. 3. 5. 6. 7.) *Purchase* 14. 49. 50. *Registry* (*Ship* 11.) *Scandal* 6. 8. 9. 10. *Set-off* 4. 8. *Stock* 15. *Tacking* 6. 8. 10. 11. *Trust* 82. *Valuation* 3. 4. 6. 7. *Vendor and Vendee* 26. *Voluntary Settlement, &c.* 1.

## BANK STOCK.

1. ) Distribution of extraordinary profit; whether as  
2. ) *bonus* or capital; or as dividend.
1. Distribution by the Bank of extraordinary profit, beyond the regular dividend, not by way of increased dividend, but as a *bonus*, taken as capital; and the manner, in which it is given, makes no difference. *Witts v. Steere* (a). - - - - -
2. Tenant for life of Bank stock held entitled to a dividend "of £5 *per cent.* interest and profits for the half year." *Barclay v. Wainewright*. - - - - -
- See *Stock* 4. 10. 11.

XIII.

XIV.

## BANS.

See *Marriage* 10. 12. *Ward of Court* 3.

## BAR.

See *Infant* 27.

## BARGAIN AND SALE.

See *Purchase* 19.

## BARGAIN AND SALE (ENROLLING.)

See *Vendor and Vendee* 18.

## BARON AND FEME.

1. Fraud on marital right.  
2. Conveyance by feme pending marriage treaty.

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(a) See the note, Vol. IV. page 803.

3. *Ne exeat Regno* refused on wife's affidavit against husband.
4. Wife's evidence against husband.
5. }
6. }
7. }
8. }
9. }
10. }
11. } Exoneration from mortgage of her estate.
12. }
13. }
14. }
15. }
16. }
17. }
18. }
19. Legacy to wife settled.
20. Examination as to money to be laid out in land for wife.
21. Wife's contract not enforced.
22. Effect of wife's elopement and adultery on settlement.
23. Conveyance by feme pending marriage treaty without notice.
24. } Wife's equity on trust property against assignees of
25. } husband bankrupt.
26. No action by assignee of wife's *chose in action*.
27. Wife's equity in trust property against assignees of husband, bankrupt.
28. } Marital right on wife's death : not as next of kin.
29. }
30. Wife's right by surviving not bound by agreement.
31. } Marital right.
32. }
33. Settlement approved binding after death.
34. Assignment of wife's equitable interest.
35. No action by husband for wife's legacy.
36. Assignment of wife's equitable interest.
37. Husband proving in bankruptcy the value of annuities to the separate use.
38. Claim against assets as a gift to the separate use failed on evidence.
39. Demurrer by wife to discovery, as agent to husband.
40. Wife's survivorship against appropriation.
41. Legacy to wife settled.
42. Equity of wife and children to a farther settlement out of property coming to her.
43. Husband committed, until his wife should do an act, discharged, if he cannot prevail on her.
44. Provision by settlement not a purchase of all wife's property, unless clearly intended.
45. Provision in lieu of dower or thirds a bar under intestacy.
46. Whether agreement to let binds wife surviving; and if so, whether the rent survives.
47. Extent of consideration of marriage.

48. Marital right in chattel real.
49. Obligations not surviving against husband.
50. Interest in nature of *chose in action*, not reduced into possession, passed by will of wife surviving.
51. Decree to procure wife to join.
52. Whether jurisdiction to permit wife to give up trust-fund, not to her separate use or appointment.
53. Trustee may pay husband : no instance of application on wife's equity by the debtor.
54. Whether decree to procure wife to join.
55. Produce of advancement by wife on a joint adventure decreed to husband.
56. Legacy of stock in trust for wife survives against assignees under husband's bankruptcy.
57. Settlement in consideration of wife's fortune confined ; and husband, not having fulfilled his part, cannot claim.
58. Analogy between law and equity as to survivorship.
59. Distinction in equity as to survivorship between assignments voluntary and for value.
60. Stock in wife's name as next of kin survived : husband having only signed partial transfers. Whether he could transfer ; or be prevented.
61. Term survives ; if not disposed of by marital right.
62. Arbitration refused upon wife's interest.
63. Interest of wife's money in Court refused on ill-treatment.
64. Settlement decreed out of wife's property not affected by her death before Report.
65. Waiver of settlement out of wife's property.
66. Marital right to wife's property.
67. Trustee for wife may pay husband before bill.
68. Survivorship after order for a proposal.
69. Settlement in consideration of portion limited to the marriage without clear intent. No set-off of husband's debt against her, as next of kin.
70. Marital right to her *chose in action*.
71. No jurisdiction by consent upon absolute trust for wife surviving.
72. Dividends paid to wife, subject to a partial assignment by husband, gone abroad without making any provision.
73. Effect of husband's assignment for value on wife's equity.
74. Wife's contract void.
75. Wife cannot execute a deed generally.
76. Marriage not affected by contract.
77. Sale of reversionary interest in stock by consent.
78. Consent not taken until the subject ascertained.
79. } Reducing wife's legacy into possession.
80. }
81. Settlement decreed out of wife's property not affected by her death before Report.
82. As to wife's right to waive proposal as against her children.



83. Wife's equitable right to a settlement upon herself and children.
  84. Whether children have a right to a settlement after mother's death.
  85. Wife ordered to answer husband's bill.
  86. Wife guardian of illegitimate children : payment on separate receipt.
  87. Covenant within six months after husband's death to pay wife, if she survives, contingent.
  88. Settlement, decreed out of wife's property, not affected by her death before Report.
  89. Probate of wife's will limited as to beneficial interest, not, as executrix, to make an executor.
  90. Demurrer by wife to discovery as agent to husband.
  91. Wife's reversion on husband's death not assignable by him.
  92. Wife's reversion on mortgage reserved to the survivor, husband surviving entitled.
  93. Wife's stock not vested in husband by transfer as trustee.
  94. Settlement of all personal property husband should be possessed of during life; attaching on capital, not income.
  95. } Effect of consideration of marriage against creditors.
  96. }
  97. Wife not chargeable with default.
  98. Not evidence for or against each other.
- 
1. The burthens, to which a husband is liable, are a consideration for his marital rights; upon which therefore fraud may be committed. - - - - - I. 28
  2. Conveyance by a woman under any circumstances, and even the moment before marriage, good *prima facie*: bad only, if fraud; as where made pending the treaty without notice. - - - - - I. 28
  3. *Ne exeat regno* upon affidavit of wife against husband refused. *Sedgwick v. Watkins*. - - - - - I. 49
  4. Wife's evidence against husband allowed only for security of the peace; but she cannot sustain an indictment against him. - - - - - I. 49
  5. Wife barred from her right to be exonerated out of the assets of her husband in respect of money raised by mortgage of her estate, and received by him, by telling executor, she would not raise her claim; and no difference, whether legacies were paid before or after. *Clinton v. Hooper*. - - - - - I. 173
  6. Parol evidence of her declarations admissible to prove, that it was not applied for the husband's use; not to prove the transaction itself different from what it appears to be by the instruments and the other evidence; as that it was intended as a gift to him. *Clinton v. Hooper*. - - - - - I. 173
  7. General exception of mortgage debts out of charge in



- will for debts not sufficient to put wife to election to take under will or have mortgage of her estate paid out of assets. - - - - - I. 178
8. Proof of application of money raised on wife's estate to her use bars her demand on husband's assets. Wife does not stand in place of the mortgagee. - - - I. 181
9. Parol evidence admissible to prove application for benefit of the wife or any relation of her's. - - - I. 184
10. Heir at law would be barred of his right against personal assets by declaration, proved by parol, that he would not raise his claim, or, even after legacies paid, affirming it; and wife's case is the same as that of heir at law. - - - - - I. 185
11. Husband having paid part of mortgage upon wife's estate, in which she had joined, may by his indorsement charge it again to the same amount, but not *ultra*. - I. 185
12. Husband acquires no interest in it by paying it off. - I. 186
13. Wife not to be paid in preference to onerous creditors. - I. 186
14. Wife's right not on the contract; but because, being husband's debt, his personal estate bound in the first instance. - - - - - I. 186
15. Not necessary to appear on the instruments, that it is the debt of the wife; but may be proved *aliunde*. - I. 187
16. Where the debt is not originally the husband's, his covenant to pay is only collateral; and will not make it his: but *quære*, whether so against creditors. - - I. 187
17. Court will not infer an equitable assumpsit contrary to the tenor of the obligation subsisting between husband and wife. - - - - - I. 188
18. Where the money was paid to the wife with privity of husband, without writing, so as to appear that she could dispose of it in her life, or by will, not to be considered the debt of husband. - - - - - I. 188
19. Legacy decreed to *fême covert*; settlement directed. *Green v. Scott*. - - - - - I. 283
20. Wife examined on commission apart from husband as to the disposition of money, devised to be laid out in land for her in tail; reversion to her in fee; whether to be received in money or laid out as directed. *Binford v. Bawden*. - - - - - I. 512
21. Equity will not make good against a married woman a contract, on which she cannot be sued at law. - - - II. 156
22. Settlement on marriage of stock, belonging to the wife, in trust after the death of the wife, if the husband survive, for him for life; if no issue, the whole to revest in the wife with power of appointment; if none, to her next of kin: the wife eloped; and lived in adultery: on the bill of the husband to have the dividends paid to him during their joint lives, evidence of such intent, or that they should be to the separate use of the wife, refused: but held to belong to the husband for the

- mutual support of both: decreed, that the costs, and also the expenses of the husband in a groundless suit instituted against him by the wife in the Ecclesiastical Court, should be paid out of the accumulation; and, the only surviving trustee appearing not to be indifferent, that the future dividends should be paid into Court. *Ball v. Montgomery.* - - - - - II. 191
23. If a woman conveys her property before marriage without the privity of the intended husband, it is fraudulent; and will be set aside. - - - - - II. 194
24. Assignees of a bankrupt must make a provision for his wife out of all her property, which can be obtained in equity only; and a settlement before marriage of part of her property to her separate use does not bar her. *Burdon v. Dean.* - - - - - II. 607
25. The equity of a wife to have a provision out of her trust property, claimed by her husband, attaches upon newly-acquired property. - - - - - II. 608
26. An action upon an assignment of the interest of a married woman in the residue in the hands of an executor does not lie. - - - - - II. 676
27. Devise to the use of *A.* and her issue in strict settlement, subject to a trust for debts and legacies and to pay annuities out of rents and profits with power to sell. Upon the bill of creditors and legatees, one of the annuitants being living, the assignees of *A.*'s husband, a bankrupt, being defendants, were decreed to make proposals for a provision for the wife. *Oswell v. Probert.* - - - - - II. 680
28. Trust under marriage settlement for the next of kin of the wife, subject to her appointment by will with two witnesses: appointment in favour of the husband by an unattested will being void, the children are entitled; not the husband; who is not of kin to his wife; and whose claim to her personal property is not in that character under the statute, but *jure mariti*; and in this case according to the plan of the settlement he was not intended. *Watt v. Watt.* - - - - - III. 244
29. Husband's interest by marriage in his wife's personal property, *chose in action*, or equitable interest. - - - - - III. 469
30. Husband under a decree to propose a settlement of stock belonging to his wife, transferred to the Accountant-General by order, came to an agreement with her, out of Court, and while they lived apart, but not legally separated, to take part and give up the rest: this agreement does not bind the wife; and the husband dying, before any steps were taken for executing it, the whole survived to the wife. *Macauley v. Philips.* - - - - - IV. 15
31. Husband is entitled to the income of his wife's equitable interest; unless he has received some fortune with her;

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|     | or has misbehaved; as, by running away with a ward of the Court. <i>Macauley v. Philips.</i> - - - -   | Vol.<br>IV. |
| 32. | Difference between legal and equitable interests of the wife as to the right of the husband. - - - -   | IV.         |
| 33. | If a settlement of the wife's equitable interest had been approved and ordered by the Court, it is binding, notwithstanding the death of either party, before it is carried into effect. - - - -   | IV.         |
| 34. | Assignment for valuable consideration of the wife's equitable interest by the husband does not bar her equity. <i>Quære</i> as to a trust of a term for years of land. - -   | IV.         |
| 35. | Action by the husband for a legacy due to his wife does not lie. - - - -   | IV.         |
| 36. | Bill by husband for stock, held in trust for his wife: a claim was set up under a bond by the wife and her former husband, securing an annuity out of the dividends, as an assignment for valuable consideration: but, as it came before the Court collaterally, and several objections were taken upon the Annuity Act, the infancy of the wife, and the nature of her interest at the time, the <i>Master of the Rolls</i> , though upon the general question inclining in favour of the wife's equity against an assignee for valuable consideration, would not determine it; but referred it to the Master to approve a settlement upon the wife and her issue, with liberty to the representative of the obligee to apply. <i>Franco v. Franco.</i> - | IV.         |
| 37. | Testator having proved the value of annuities, secured to the separate use of his wife, as a debt under the bankruptcy of the grantors, his assets were charged with the dividends only, upon the foot of that transaction, not with the annuities, as subsisting. <i>M'Lean v. Longlands.</i> - - - -   | V.          |
| 38. | A claim by the testator's widow to dividends, to which he was entitled under a bankruptcy, as a gift by him to her separate use, failed; the evidence not even affording a sufficient ground for directing an issue. <i>M'Lean v. Longlands.</i> - - - -   | V.          |
| 39. | Demurrer by a married woman to a bill of discovery of transactions with her, as agent to her husband, allowed. <i>Le Texier v. Margrave of Anspach.</i> - - -  | V.          |
| 40. | A legacy to a married woman is not sufficiently reduced into possession by an appropriation by the executrix of a mortgage to the same amount, so as to prevent her survivorship upon her husband's death. <i>Blount v. Bestland.</i> - - - -  | V.          |
| 41. | Settlement directed of a legacy to a married woman, claimed by her husband. <i>Blount v. Bestland.</i> - -   | V.          |
| 42. | Upon a bill of a married woman, entitled to a share of the personal estate as one of the next of kin of the intestate, against her husband, and the administrator, the latter claiming to retain towards satisfaction of a debt  |             |

by bond from the husband to him, it was declared, he was not entitled to retain; but that the plaintiff's share was subject to a farther provision for her and her children; the settlement on her marriage being inadequate to the fortune she then possessed; and it was referred to the Master to see a proper settlement made on her and her children: regard being had to the extent of her fortune and the settlement already made upon her.

*Lady Elibank v. Montolieu.* - - - - -

V. 737

43. Instances of a husband being committed, till his wife should do an act: but, where he made it appear he could not prevail upon her, he was discharged. -

V. 848

44. Provisions by a marriage settlement not held a purchase of all the property of the wife, unless that purpose is expressed, or clearly imported. *Druce v. Denison.* -

VI. 385

45. A provision by marriage settlement, in lieu, bar, and satisfaction of all dower or thirds, which the wife might otherwise be entitled to out of all the real and personal estate, held to bar her interest in what was not disposed of by the will of her husband. *Druce v. Denison.* -

VI. 385

46. Whether an agreement by a husband for a lease of part of his wife's term will bind her after his death, as an actual lease does, and if so, whether the rent is his property, or survives to her with the reversion, *quære?* *Druce v. Denison.* - - - - -

VI. 385

47. The consideration of marriage runs through the whole settlement; and especially supports every provision with regard to the husband and wife. She is interested in the provision for her husband; enabling him to provide for her and the children; and it is not affected by subsequent events; as the death of the wife without children. *Nairn v. Prowse.* - - - - -

VI. 752

48. Husband may forfeit or dispose of his wife's chattel real during her life: if he does not, it survives to her: if he survives, it goes absolutely to him. - - - - -

VII. 183

49. Many obligations, which do not survive against the husband after coverture. - - - - -

VII. 183

50. *A.* tenant for life, in case she should so long continue unmarried; in case of her marriage to her in fee; in case of her decease unmarried, to her sister *B.* in fee. *A.* and *B.* and the husband of *B.* joined in a sale. The purchase-money was laid out in the funds in the names of trustees without any declaration of trust or agreement as to the application: nor was any notice of this fund taken in the wills of *B.* and her husband, and *B.* being the survivor, made a general disposition of all her personal estate in favour of *A.*—*A.*, though still unmarried, held absolutely entitled to the stock. *Scawen v. Blunt.* - - - - -

VII. 294

51. Husband under the circumstances decreed to procure his wife to join in a surrender of copyhold estate. *Stephenson v. Morris.* - - - - -

VII. 474

52. Whether a jurisdiction in equity to permit a married woman to give up her interest for life in a trust fund, not settled to her separate use, or subject to her appointment, analogous to a fine, can be maintained, *quære?* The bill by the husband and wife against the trustees for this purpose was dismissed, as premature; the funds not being ascertained: the husband accountable to the trustees in respect of his receipts by their permission, unliquidated: and as to part of the capital, the trust of which was for her appointment by deed or will notwithstanding coverture, no absolute appointment having been executed, but merely by way of indemnity to the trustees. *Sperling v. Rochfort.* - - - - - VIII
53. Where the Court secures a provision for a wife out of her equitable interest claimed by the husband, the trustee is at liberty to pay to the husband; and that payment is not called back. No instance of the debtor calling upon the Court to interpose that equity for the wife. VIII.
54. Whether under a contract by a husband to sell the estate of his wife the Court will decree him to procure her to join, *quære?* *Emery v. Wase.* - - - - - VIII
55. A married woman, living in trade, not in *London*, without the interference of her husband, residing in a different part of the kingdom, advanced money for the purchase of a share in the lottery upon an agreement with the plaintiff, that half should be considered a loan to him; and they should be jointly concerned in the adventure. Held, that, the money belonging to the husband, the produce was his; and the bill was dismissed. *Lamphir v. Creed.* - - - - - VIII
56. The general assignment in bankruptcy has not the effect of reducing into possession a legacy of stock in trust for the bankrupt's wife; whose right by survivorship was established against the assignees. *Mitford v. Mitford.* - - - - - IX.
57. Settlement in consideration of the fortune of the wife confined to her fortune at the time; unless expressed to comprehend future accessions. No claim can be maintained by the husband, or in his right, while the terms are not fulfilled on his part. *Mitford v. Mitford.* IX.
58. Analogy between the rules of law and equity as to a wife's right of survivorship. - - - - - IX.
59. Distinction in equity, with reference to a wife's right of survivorship, between assignment voluntary and for valuable consideration. - - - - - IX.
60. Stock, transferred into the name of a married woman, as next of kin of an intestate, upon the death of her husband without having done any act with reference to it, except signing partial transfers by her, survives to her. Whether he had a right to transfer it into his own or another name, whether the Bank could prevent it, or

- this Court could interfere to make a provision for her,  
*quære? Wildman v. Wildman.* - - - IX. 174
61. A wife's term may be disposed of or forfeited by her husband; or taken in execution for his debt: but, if not, it survives against his representatives. - - - IX. 177
62. The Court would not permit a reference to arbitration; one of the parties being stated to be a *fême covert*, interested in real estate; nor even a reference to the Master, whether it would be for her benefit; as in the case of an infant; distinguishing the case of Election upon the condition imposed. *Davis v. Page.* - - - IX. 350
63. Application by a husband for the interest of his wife's money in Court refused on her affidavit of ill-treatment. X. 56
64. Right of children to provision out of the property of their mother, under a decree, directing a settlement by the husband on her and her children; notwithstanding her death before the Report. Demurrer to the bill of the children was over-ruled. *Murray v. Lord Elbank (a).* X. 84
65. *Fême covert* may wave her equity for a settlement out of her own property, even after the order, at any time before its completion. - - - X. 88
66. Husband, where he can, may lay hold of wife's property; and this Court will not interfere. - - - X. 90
67. Previously to a bill a trustee for a *fême covert* may pay her personal property or the rents and profits of her real estate to her husband: not after a bill filed. - X. 90
68. Notwithstanding an order for a proposal for a settlement, under the equity of a married woman, by the death of either, while resting in proposal, the right by survivorship as between the husband and wife is not affected. X. 91
69. Settlement by husband in consideration of the portion or fortune, which he would have or receive upon his marriage, limited to the portion received upon the marriage; not extending to make him a purchaser of future accessions; unless that intention is clear. The wife, therefore, entitled to an additional provision out of a subsequent interest, arising to her, as next of kin; which equity was administered upon her bill against the assignees under the bankruptcy of her husband; and the administrator cannot set off a debt from the husband to the intestate's estate. *Carr v. Taylor.* - - - X. 574
70. As to the right of the husband to sue in his own name for the legal *chose in action* of his wife, *quære.* - X. 579
71. No jurisdiction in equity by the consent of a married woman upon examination to transfer to her husband personal property, settled in trust for her, surviving her husband, absolutely. *Richards v. Chambers. Seaman v. Duill.* - - - X. 580

(a) See Vol. XIII. page 1; XIV. page 496.



72. Assignment by a husband of part of his wife's equitable interest, viz. dividends of stock in trust for her, for valuable consideration, enforced upon the bill of a surety for the husband, to be indemnified against past and future payments: the assignment extending only to £100 a-year, out of £260. The remaining dividends under a bill on behalf of the wife paid to her; the husband having after the assignment gone abroad without making any provision for her. *Wright v. Morley.* - - -
73. As to the effect of an assignment for valuable consideration by a husband, of his wife's equitable interest, with reference to her equity for a provision, *quære.* - - -
74. Contract by a *femé covert* void at law. - - -
75. A married woman cannot execute any deed generally. - - -
76. Marriage not to be affected by contract between the parties. - - -
77. Consent of a married woman taken in Court *de bene esse* and with much doubt under a bill by her and her husband for execution of a contract for sale of her reversionary interest in stock. *Wollands v. Crowcher.* - X
78. Consent not taken, until the subject is ascertained. *Wollands v. Crowcher.* - - - - - X
79. Legacy to a married woman, subject to a life interest, reduced into possession, as against her right, surviving, by payment to her husband during the life of the person entitled for life. *Doswell v. Earle.* - - - X
80. Possession by husband as executor and trustee not a reduction into possession of his wife's share of the residue, entitling him against her right by surviving. *Baker v. Hall.* - - - - - X
81. Right of children to a provision out of the property of their mother under a decree, directing a settlement on her and her children; notwithstanding her death before the Report: no act being done by her to wave the equity. *Murray v. Lord Elibank (a).* - - - - - XI
82. As to the right of a married woman, after a proposal by her husband for a settlement of her property, to wave it, so as to bind the interest of the children, *quære.* - XI
83. The equitable right of a married woman stands upon the peculiar doctrine of the Court. When money is carried over to her account, the habit of the Court is, without any previous application by her, to direct an inquiry, whether any settlement has been made; and the constant habit has been to direct a settlement, not upon her only, but upon the children also: her option to wave a settlement not enabling her to have it confined to herself, excluding her children. - - - - - XI
84. Whether children have a substantive independent right to claim a settlement out of the property of their mother, after her death, if not directed during her life, *quære.* XI

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(a) See Vol. X. page 84; XIV. page 496.

85. Order upon a married woman to put in an answer to a bill by her husband. - - - - - XIII. 266
86. A married woman appointed guardian of an illegitimate child; and payment ordered to her upon her separate receipt. *Wallis v. Campbell.* - - - - - XIII. 517
87. Covenant upon marriage, that the heirs, executors, &c. of the husband shall within six months after his death pay to the wife, if she should survive him, the fortune he received with the addition of £50 *per cent.*; and, in case he should receive any other part of her fortune, to which she was entitled in reversion under a will, to pay that in the same manner, and with the same profit. The husband becoming bankrupt, the wife has no claim upon that reversionary fund against a purchaser under the Commission. *Basevi v. Serra.* - - - - - XIV. 313
88. After a decree for a settlement upon a married woman and her children out of her share, as one of the next of kin of an intestate, the mother dying before any report, the children under a bill, filed by them, having obtained a decree for a settlement, were also held entitled, though not in point of form to the benefit of the original decree upon the bill of their mother, to the same directions, by way of original decree under their bill, for taking the necessary accounts, &c. to ascertain and secure the fund. *Murray v. Lord Elbank (a).* - XIV. 496
89. Probate of the will of a married woman, which is now necessary, though formerly otherwise, limited to her power, by the assent of her husband, with respect to any beneficial interest; not, as to her right, as executrix of another person, to make an executor, and continue the representation. *Stevens v. Bagwell.* - XV. 139
90. Demurrer by a married woman to a bill, praying discovery only against her, and relief against her husband, as to contracts, &c. by her, as agent for her husband, alleging the vouchers, &c. to be in her possession, allowed; upon the objection, first, to making a mere agent a party: secondly, to admitting the testimony of a wife in her husband's cause. *Le Texier v. The Margravine of Anspach.* - XV. 159
91. Wife's reversion, which cannot fall into possession during the husband's life, as if it is upon his death, not assignable by him. - - - - - XVI. 129
92. Husband and wife, seised under the settlement for their lives successively, with remainders in strict settlement and to the heirs of the wife, having no issue, joined in a mortgage, by fine, declaring the ultimate use to the survivor. Declaration, or clear intention, equivalent to it, held necessary to change the use; and no purpose

(a) See Vol. X. page 84. XIII. page 1.



**SEPARATE MAINTENANCE.—3.** Wife cannot bind husband by contract.

4. Under bond destroyed: liberty to bring an action.

5. When decreed: not on mere separation by consent.

1. Trust in a deed of separation to permit *A.* to receive the dividends of stock for the maintenance and support of the wife, with a covenant of indemnity to her husband: a grant by her of an annuity out of the dividends was held void. *Hyde v. Price.* - - - - - I

2. *Quere*, Whether a married woman, having a separate maintenance, can be sued as a *fême sole* (*a*). - - - I

3. A married woman, living apart from her husband upon a separate maintenance, cannot bind him by her contract. - - - - - I

4. Bill by a married woman, claiming under bond by her husband to a trustee for a separate maintenance, admitted to have been destroyed by them, on the ground of subsequent incontinence. The bill retained, with liberty to bring an action. *Seagrave v. Seagrave.* - XI

5. No decree for separate maintenance upon the bill of the wife on the mere fact, that she and her husband were separated by consent; he not making any addition to the settlement for her on marriage out of her property. The only instances of it, either out of his property or what was originally her's, are, where he had turned her out of doors, or by ill-treatment obliged her to leave his house; or had quitted the kingdom, leaving her destitute. *Duncan v. Duncan.* - - - - - XI

**SEPARATE PROPERTY.—1.** May be disposed of by will.

2. Sole right to dispose of it.

3. Husband's right for want of disposition.

4. *Fême sole* in respect of it. Inquiry as to appointment for the husband.

5. }  
6. } Subject in equity to creditors.  
7. }

8. Assignee may claim execution of the trust. Distinction as to general creditor.

9. Income during her life given to husband.

10. Wife not as a *fême sole* in transactions with husband.

11. Husband permitted to receive the income.

12. Separate provision increased.

13. Distinguished from power.

14. Claims against it not aided.

(a) See Vol. III. page 443, note.

- SEPARATE PROPERTY.—15. Clear intent required against marital right.
16. Bequest to pay into the proper hands, &c.
17. Security upon.
18. For life, remainder to husband, decreed to him on his personal security.
19. Whether liable to execution.
20. Will incident to it: not as to other property without assent.
21. Not without clear evidence: so of her gift to him.
22. Husband trustee.
23. Not subject to consideration of void annuity.
24. Service on wife necessary.
25. Whether chargeable in a different form from that prescribed.
26. Under trust to receive to her own use independent, &c.
27. In leaseholds, including a reversionary term, against husband and purchaser with notice, no trustees being appointed.
28. In money obtained by husband: no lien on estates purchased: nor specialty debt under covenant not to obstruct her appointment.
29. Power of disposition.
30. Income: husband, permitted to receive, accountable only for a year.
31. Sale by wife and husband established.
32. Wife considered a *fême sole*.
33. Power of sale.
34. Power of disposition, though for husband.
35. Bound without the trustees.
36. Liable to her bond as surety.
37. Securities by collusion with husband.
38. Account not beyond husband's death, having lived together.
39. Wife's transactions must be fair.
40. Charged with wife's debt.
41. As assets no priority to bond.
42. Power of disposition, unless anticipation restrained.
43. Under bequest for her own use.
44. Under trust of the income for her sole use.

1. Will by wife of her separate property and its produce, whether derived from husband or a third person, good.  
*Fettiplace v. Gorges.* - - - - -

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|   | Vol. : |
| 2. The moment a woman takes personal property to her sole use, she has the sole right to dispose of it. -   | I.     |
| 3. If no disposition of wife's separate property, husband succeeds as next of kin, not by marital right (a). -  | I.     |
| 4. <i>Fême coverte</i> is a <i>fême sole</i> , as far as the instrument creating her separate estate makes her proprietor; and if she pledges it according to her power, the trustees must hold to the uses she appoints: but where she according to her power appointed for the benefit of her husband, an inquiry into the circumstances was directed. <i>Pybus v. Smith.</i> - - - - -   | I.     |
| 5. Creditor of wife has a right in equity against her separate property; and against husband in respect of it; but not beyond it, if notice. <i>Lillia v. Airey.</i> - - - - -  | I.     |
| 6. Plaintiff with notice of separate allowance of the wife, a very weak woman, advanced to her wantonly beyond it; proof, that the plaintiff received more than the demand she could make out; bill dismissed without account, the value being trifling. <i>Lillia v. Airey.</i> -  | I.     |
| 7. A married woman is liable to creditors in respect of any separate property, though not from her husband. If they are separated by deed or sentence, the husband need not be a party to the action; but he must, if they are not so separated, though living apart. - -   | II.    |
| 8. Where there is an assignment by a married woman of her separate property in the hands of trustees, the assignee may come for execution of the trust; as her disposition is valid to the extent of her power: but a general creditor cannot come into equity to have his debt satisfied out of that property. - - - - -   | II.    |
| 9. <i>Fême coverte</i> by deed directed rents and profits, her separate property, to be paid during her life to her husband for his own proper use and benefit: the intention being only to give him the administration during coverture without account, after his death the widow is entitled to the future rents. and to those accrued in his life and not received. If her interest had passed, it must upon the circumstances of the transaction have been set aside. <i>Milnes v. Busk.</i> - - - - - | II.    |
| 10. The rule, that a <i>fême coverte</i> is to be considered as a <i>fême sole</i> as to her separate property, does not extend to transactions with her husband. - - - - -   | II.    |
| 11. Husband is not to account for the income of his wife's separate estate, which she permitted him to receive. <i>Smith v. Lord Camelford.</i> - - - - -   | II.    |
| 12. Husband claiming his wife's fortune in equity: though there was a separate provision, the Court, not thinking it sufficient, made him increase it. - - - - -  | III.   |
| 13. Testator gave £1000 stock to a married woman for her  |        |

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(a) See Vol. I. page 49, note.

separate use, and whenever she should die, to be absolutely in her own power to dispose of by will, or writing purporting to be her will, to any person or persons, purpose or purposes, she should think proper: but in case of failure of any such disposition or appointment to go over: this is not a power, but an absolute gift, qualified only to exclude the husband upon the death of his wife: therefore it passed by general words in her will. <i>Hales v. Margerum.</i> - - -	III. 299
14. As to creditors of the husband, or persons dealing with a married woman as to separate property, equity ought to go no farther than to leave any legal right undisturbed; not to improve the security. - - -	IV. 145
15. To prevent the marital right in property of a married woman a clear intention, that it shall be to her separate use, must appear: a mere trust to pay the interest to her for life was held not sufficient: the capital, being bequeathed according to her appointment, whether covert or sole, and in default of appointment, to her representatives, including her husband, was admitted to be to her separate use. <i>Lumb v. Milnes.</i> - - -	V. 517
16. Bequest in trust to pay the annual produce into the proper hands of a married woman, is a bequest to her separate use. - - -	V. 545
17. The Court refused to enforce a security upon rents and profits, settled in trust to receive and pay them yearly as received to the separate use of a married woman; and upon the circumstances dismissed the bill with costs. <i>Mores v. Huish (a).</i> - - -	V. 692
18. Settlement of stock to the separate use of a married woman for life; and after her death for her husband absolutely. Decree upon the bill of the husband and wife for a transfer to him upon his personal security. <i>Chesslyn v. Smith.</i> - - -	VIII. 183
19. As to execution against the property of a married woman, <i>quære.</i> - - -	IX. 189
20. Disposition by will incident to a trust for the separate use of a <i>fême coverte</i> ; and the husband, having taken a transfer, is a trustee. As to other property she cannot make a will without the assent of her husband. <i>Rich v. Cockell.</i> - - -	IX. 369
21. Gift by a <i>fême covert</i> of her separate property to her husband not inferred without clear evidence; nor on the other hand against the husband a gift to her separate use. <i>Rich v. Cockell.</i> - - -	IX. 369
22. Husband a trustee for the separate use of his wife. <i>Rich v. Cockell.</i> - - -	IX. 369
23. Annuity granted by a <i>fême coverte</i> , charged upon her separate estate, being void under the statute for want of	

(a) See the note, Vol. V. page 694.

the insertion of the clause of redemption in the memorial, the consideration cannot be recovered out of her separate estate; though part of the money was applied in paying fines upon admission to copyholds.

*Jones v. Harris.* - - - - -

IX. 486

24. Plaintiff's seeking relief, not merely against a husband, seised or entitled in right of his wife, but against the separate estate of the wife, must serve the wife. *Jones v. Harris.* - - - - -

IX. 486

25. As to the proposition, that the separate property of a *fême coverte* may be charged in a different form from that prescribed by the instrument, considering her as a *fême sole* to all intents and purposes, *quære.* - - -

IX. 497

26. Trust to permit a married woman to receive the interest or dividends of stock to her own use during her life, independent of her husband. She is absolutely entitled for life to her separate use; and upon the rule, that a *fême coverte* is to be considered sole as to her separate property, her assignment, to secure an annuity with her husband, was established. *Wagstaff v. Smith.* - - - - -

IX. 520

27. Testator gave leasehold premises to his daughter for life, if his term or terms and interest therein should so long subsist, for her sole and separate use, notwithstanding her present or future coverture; and after her decease to her children equally, their executors, &c. during all the remainder of the estate, term or terms and interest, therein, which should be then to come and unexpired. No trustees being interposed, the husband, having possession, was held accountable according to the uses of the will, both as to the original leases and also as to the reversionary leases, granted to him, as the person entitled under the will of the former tenant, upon favorable terms; and the equity was established against a purchaser from him with notice. *Parker v. Brooke.* - - -

IX. 583

28. Money settled to the separate use of the wife, and in the event of no children to her absolutely, surviving the husband; with power to the trustees with her consent to invest it in land. No lien upon estates, purchased by the husband, having obtained the money from the trustee: the circumstances not raising the presumption, as if he had been under an engagement to purchase, that his purchases were in pursuance of that engagement; and upon the evidence the fact of the application of the trust fund, or, the inability of the husband by other means, not being made out. Not a specialty debt from the husband by the effect of his covenant not to obstruct the appointment of the wife under a power. *Lench v. Lench.* - - - - -

X. 511

29. Power of disposition of a *fême coverte* over estate settled to her separate use. A sale by the husband and wife

- by fine was under all the circumstances established as to the separate estate of the wife for life and her reversion in fee; though to the trustee for her separate use, and to support the contingent remainders: but set aside as to the remainders, to such persons, and uses, &c. as she should appoint by will, and, in default of appointment to her children, upon her bill; and two wills, obtained from her, decreed to be delivered up. *Parkes v. White.* - - - - - XI. 209
30. Wife permitting her husband to receive her separate income, the account shall go back only one year. - - - XI. 225
31. Trust by marriage settlement to pay the rents and profits according to the appointment of the wife from time to time; in default of appointment to her for her sole and separate use; the receipts of herself, or the person she should appoint from time to time, to be from time to time effectual releases, &c. Sale by her and her husband of her separate interest established. *Witts v. Dawkins.* - - - - - XII. 501
32. A married woman considered as a *fême sole* as to property, settled to her separate use, whether in possession or reversion; and as such therefore may sell; if not particularly restrained by the instrument. Her consent on examination required only to wave her equity to have a settlement out of her equitable interest; not to pass her separate property. *Sturgis v. Corp.* - - - XIII. 190
33. Under a bequest of stock, in trust to permit a woman to receive the dividends for life for her sole and separate use, &c. and to pay the same into her own proper hands, and that her receipt and receipts should from time to time be sufficient discharges, a sale by her of part of the dividends established. *Browne v. Like.* - - - XIV. 302
34. Grant of an annuity by a married woman out of her separate property established; notwithstanding notice to the plaintiff by the trustees, that they would pay to herself only on account of complaints of her husband's conduct, in consequence of her refusing to join him in raising money; the transaction, though for the benefit of the husband, upon the evidence being her deliberate act, aware of what she was doing, and a free agent. *Essex v. Atkins.* - - - XIV. 542
35. A married woman may bind her separate property without the trustees; unless their assent is rendered necessary by the instrument, giving her that property. - - - XIX. 547
36. Bond of a *fême couverte*, as a surety, enforced against her separate estate under a settlement to her separate use, with power of appointment by will, or any writing purporting to be her will, and, in case she should die in the life of her husband, and without making any will or other disposition as to the whole or any part, then as to the whole or such part, as to which no gift or disposition should be so made, to the persons, who would

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be entitled by the statute, if she had died intestate and unmarried. <i>Heatley v. Thomas.</i> - - - -	XV.	596
37. Securities obtained from a married woman, having property settled to her separate use, by a creditor of her husband, who by suppressing that fact procured himself to be appointed one of the trustees, his co-trustee not being a party to the transaction, set aside. <i>Dalbiac v. Dalbiac.</i> - - - -	XVI.	110
38. Account of separate property not farther back than the husband's death; having lived together. <i>Dalbiac v. Dalbiac.</i> - - - -	XVI.	110
39. Married woman permitted to transact as to her separate property: but such transactions must be perfectly fair and open. - - - -	XVI.	125
40. Decree for payment of a debt by the promissory note of a married woman out of the rents and profits of estates, settled to her separate use for life. <i>Bullpin v. Clarke.</i>	XVII.	365
41. In the distribution of separate property of a married woman as assets after her death a bond not entitled to priority. <i>Anonymous.</i> - - - -	XVIII.	258
42. Right of a married woman to dispose of property settled in trust for her separate use, to be paid into her hands, on her receipt, &c.; unless restrained to payment not by anticipation. - - - -	XVIII.	434
43. Bequest to a woman for her own use held for her separate use. - - - -	XIX.	419
44. Bequest to a woman of a fund with the interest thereon to be vested in trustees, the income arising therefrom to be for her sole use and benefit, vests the capital for her separate use. <i>Adamson v. Armitage.</i> - - - -	XIX.	416
<b>SEPARATION.—</b>		
1. For wife's adultery: the Court refused to interfere between them.		
2. Distinction between wife separating, or deserted, claiming provision.		
3. Arrears and growing payments on bond for annuity decreed: appropriation refused.		
4. As to the validity of articles for future separation.		
5. By deed: wife not sole to all intents. Instances.		
6. { In the Spiritual Court only for cruelty or		
7. { adultery; determined by reconciliation:		
8. { the same cause not revived; nor previous		
conduct considered.		
9. Wife representing herself sole left to plead coverture.		
10. Construction of proviso, that wife surviving shall be entitled to dower and thirds of all real and personal whereof he shall die seised, &c.		
1. Husband and wife living separate under a divorce <i>à mensâ et thoro</i> , obtained against the wife for adultery:		



- she petitioned that a sum of money belonging to her might be settled to her separate use: he petitioned that it might be paid to him: the Court refused to make any order. *Carr v. Eastabrooke.* - - - - - IV. 146
2. The Court refused to order a provision for a married woman out of dividends and interest, to which she was entitled for life; she refusing to live with her husband, an officer, abroad with his regiment, and willing to receive her. If he had deserted her, that would be a good ground. *Menzies v. Bullock.* - - - - - IV. 798
3. Decree for the arrears and growing payments upon a bond for an annuity upon separation between husband and wife; the trustee refusing to enforce the bond without an indemnity. An appropriation to answer the growing payments was refused. *Cooke v. Wiggins.* - X. 191
4. As to the validity in law or equity of articles between husband and wife for future separation, even with trustees, in this instance providing, that the wife may at any time with the assent of the trustees or the survivor, his executors or administrators, separate, and take away the children, *quære.* *Lord St. John v. Lady St. John.* - - - - - XI. 526
5. After a deed of separation executed the wife is not to all intents and purposes a *fême sole*. She cannot be a witness against her husband; or be guilty of felony in his presence: nor can an action be maintained against her. - - - - - XI. 530
6. Separation *à mensâ et thoro* in the Spiritual Court only *propter sævitiam aut adulterium*; and after reconciliation the same cause cannot be revived. - - - - - XI. 532
7. The Ecclesiastical Court in a suit for separation will not consider conduct previous to a reconciliation. - - - - - XI. 536
8. Articles of separation put an end to by reconciliation. - XI. 537
9. *Fême coverte*, living apart from her husband, and holding herself out, and contracting debts, as a *fême sole*, not entitled to summary relief; but left to her plea of coverture. - - - - - XVI. 266
10. Proviso in a deed of separation, that the wife surviving shall be entitled to her dower and thirds of all real and personal estate, whereof the husband shall die seised or possessed, construed, not as a covenant to leave her such a portion of the personal estate as she would be entitled to under the statute, had he died intestate, but that she should be in the same situation, as if not separate, as to dower and thirds, *i. e.* the actual share by the law or custom; not interfering therefore with his testamentary disposition. *Cochran v. Graham.* - - - - - XIX. 63
- WARD OF COURT.—1. Settlement against husband's assignment for value.
2. Settlement under commitment, with provision for a future husband.

**WARD OF COURT.**—3. On marriage under gross circumstances provisions for the husband rejected.

4. } Settlement on marriage with provision  
5. } for a future marriage.

III.

1. Settlement of the property of a married woman, a ward of the Court, and of all the dividends and interest accrued directed in opposition to an assignment by the husband for valuable consideration. *Like v. Beresford.*

IV.

2. Upon a proposal for a settlement under a commitment for marrying a ward of Court a power was directed to be inserted, enabling the wife to settle the interest of a moiety of her fortune upon any future husband for life. The husband on undertaking by his counsel to execute the settlement was discharged. *Winch v. James.*

3. Upon a marriage with a ward of the Court under gross circumstances a proposal for a settlement of the wife's fortune, giving the husband in the event of his surviving her a life interest, was rejected; and the Court refused even to pay out of the accumulation his debts, chiefly contracted in the maintenance of his wife and children. *Chassaing v. Parsonage.*

V.

4. Upon a settlement of the fortune of a ward of the Court, who had married a man of no property, the Court took care to secure a provision for a future marriage. *Wells v. Price.*

V.

5. Proposal for a settlement on the marriage of a female ward of the Court disapproved; as not providing sufficiently for the event of a future husband and children: viz. only by powers over her real estate: which during infancy she could not exercise; and all the property being her's. *Halsey v. Halsey.*

IX.

**WIFE DESERTED.**—1. Advances on credit of her property in Court, exceeding the income, reimbursed out of the capital.

1. Advances to a married woman, deserted by her husband, on the credit of a fund in Court, her property, for her maintenance, exceeding the income of that, reimbursed out of the capital. *Guy v. Pearkes.*

XVIII.

See *Advancement* 2. *Alien* 1. *Answer* 8. *Bankrupt* 5. 17. 23. 32. (*Preference* 5. 6.) (*Proof* 2. 27. 29.) (*Wife* 1. 2. 3. 4. 5.) *Conditional Limitation* 3. *Contract* 15. 20. 27. 54. (*Pedigree* 1.) (*Specific Performance* 6.) *Demurrer* 13. *Dower* 5. *Election* (*Dower* 5.) *Evidence* 8. (*Presumption* 3.) *Fraud* 30. *Fraudulent Settlement* 2. *Infant* 1. 33. 35. *Interest* 16. 39. 41. *Jurisdiction* 18. *Legacy* 22. *Lunacy* 57. *Marriage* 2. *Ne exeat Regno* 30. *Parent and Child* 4. *Practice* 57. 72. 79. 86. (*Party* 2.) *Purchaser* 29. *Representative* 20. 24. 26. *Revivor* 2. *Set-off* 7. *Settlement* 1. *Trust* 49. *Voluntary Settlement, &c.* 1. *Ward of Court.* *Will* 48. 180.

## BARRISTER.

See *Bankrupt* (Commissioner 2.) *Counsel. Practice* 134.  
*Receiver* 6.

## BASTARD.

1. Not entitled under the description of child.
  2. Whether, under a provision, "if *A.* should have an illegitimate son, for such son," one existing at the time can take.
  3. } Cannot take as the issue of a particular father, until
  4. } it has acquired that reputation; therefore not by pro-
  5. } spective bequest, before birth.
1. An illegitimate child not entitled under the description of a child in a will: though the testator knew the state of the family, viz. several illegitimate, and no legitimate, children. *Godfrey v. Davis.* - - - - - VI. 43
  2. Whether under a provision, if the party should have an illegitimate son generally, for such son, one in existence at the time can take, *quære. Hercy v. Birch.* - - - IX. 357
  3. Under a bequest "to such child or children, if more than "one as *A.* may happen to be *ensient* of by me," a natural child, of which she was then pregnant, cannot take; though a bequest to the natural child, of which a woman was *ensient*, without reference to any person as the father, would probably be good; having no uncertainty. *Earle v. Wilson.* - - - - - XVII. 528
  4. Rule, that a bastard cannot take as the issue of a particular person, until it has acquired the reputation of being the child of that person; which cannot be before its birth. - - - - - XVII. 531
  5. Natural child cannot take by a prospective bequest, made before his birth. *Arnold v. Preston.* - - - - - XVIII. 288
- See *Grandchild* 1. *Legitimacy. Parent and Child* 1.  
*Portion* 18. *Satisfaction* 44. *Will* 208. 217. 218.

## BEQUEST.

See *Charity. Devise. Will.*

## BERMUDA.

See *Will* 241.

## BIBLE.

See *Copyright* 4. 5. *Evidence (Pedigree* 6.)

## BIDDINGS.

1. Opened by a person at the sale.
2. No costs to the person producing an advance by opening, not the purchaser.
3. Deposit not dispensed with on circumstances.
4. The rule limiting the advance to £10 per cent. over-ruled.

5. } Costs on opening for benefit of the family; though not  
6. } the purchaser.

1. Biddings opened by a person, who was present at the sale. *Rigby v. M'Namara*. - - - - - VI. 117
2. A person, who by opening the biddings has occasioned a resale at a considerable advance, though not himself the purchaser, is not entitled to costs. *Rigby v. M'Namara*. - - - - - VI. 466
3. Upon opening biddings, the Court refused to dispense with a deposit, or to order a trifling one, upon particular circumstances. *Anon.* - - - - - VI. 513
4. The rule, that an advance of £10 *per cent.* entitles the party to open biddings, not to prevail in future. *Andrews v. Emerson*. - - - - - VII. 420
5. A person who opened biddings, but was not the purchaser, allowed his costs, on the special circumstances; having opened them not on his own account, but for the benefit of the family. *Owen v. Foulks*. - - - IX. 348
6. A person, who opened biddings, not being the purchaser, allowed his expenses on the circumstances, against the general rule; having interposed at the instance, and for the benefit, of the family. *West v. Vincent*. - - XII. 6

See *Practice* 51. 59. 60. 68. 78. 111. 119. 126. 137. 206. 258. 312. 313. 342.

#### BILL.

See *Bankrupt* (*Proof* 26. 28.) *Creditor and Debtor* 5. *Pleading* 37. *Principal and Surety* 12. 13. *Revivor*. *Scandal* 11.

#### BILL, ACCOMMODATION.

See *Bankrupt* (*Proof* 5.)

#### BILL, AMENDED.

See *Injunction* 31. *Practice* 104. 106.

#### BILL, CROSS.

See *Practice* 338.

#### BILL FOR SPECIFIC PERFORMANCE.

See *Contract*. *Practice* 32.

#### BILL IN EQUITY.

See *Fine* 4.

#### BILL OF COSTS.

See *Attorney*. *Costs* 8.

#### BILL OF DISCOVERY.

See *Arbitration* 13. *Bankrupt* 56. *Costs* 5. *Demurrer* 12. 13. *Discovery*. *Pleading* 12. 31. (*Answer* 1.) *Practice* 113. 120.

#### BILL OF EXCHANGE.

1. Not by order out of particular fund.
2. Enforced on dishonour of substituted bill.

## BILL OF EXCHANGE.

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3. Distinction between acceptance with, or without, effects.
  4. Taken up for honour of drawer: no right against acceptor without effects.
  5. Indorsed and remitted to banker for special purpose.
  6. With banker distinguished from goods with factor.
  7. Remitted to banker for special purpose generally subject to instructions.
  8. Distinction, whether remitted on general account or for special purpose.
  9. Distinguished from goods with factor.
  10. With banker, a bankrupt, generally to be restored: distinction as against another house composed of some of the firm.
  11. Not applied under special permission to negotiate.
  12. Not discounted on bankruptcy restored.
  13. Distinction between discount and deposit. Indorsement evidence.
  14. A discharge only if so taken.
- 
- |   |           |
|---|-----------|
| 1. Order payable out of a particular fund, not a bill of exchange. - - - - -  | I. 281    |
| 2. Bills, in lieu of which other bills are given, if permitted to remain with the holder, and the latter bills are not paid, may be enforced. <i>Ex parte Barclay.</i> - - -  | VII. 597  |
| 3. Distinction as to an acceptor with effects, or not, mischievous; with reference to accommodation paper. -  | XI. 411   |
| 4. A person, taking up a bill for the honor of the drawer, has no right against the acceptor without effects. <i>Ex parte Lambert.</i> - - - - -  | XIII. 179 |
| 5. Distinction as to indorsed bills remitted to a banker for a special purpose; and therefore on his bankruptcy remaining the property of the remitter, subject to the lien, whether legal or equitable property. - - -   | XIX. 36   |
| 6. Distinction between goods in the hands of a factor and bills in the hands of a banker: the latter, if indorsed, may be pledged or discounted, though against the faith of the remittance; and the remitter can be only a general creditor. - - - - -                                 | XIX. 38   |
| 7. Special remittance to a banker with direction to apply to a particular purpose, however the bill is treated, whether written short, or not, if kept, and dealt with, without objection to the instructions, must in general cases be taken subject to them. - - - - -                | XIX. 41   |
| 8. Bills, remitted to a banker on the general account, cannot on his bankruptcy be laid hold of by the remitter: if remitted for a particular purpose, they must be so applied. - - - - -   | XIX. 44   |
| 9. Distinction between bills and goods in the hands of a factor; who is to sell on account of his principal: but the property is not in him: the property in the bills passing; so that the person, to whom they are remitted, may break his faith, negotiating and pledging them: yet, |           |

if not negotiated or pledged, the bills in his hands may be followed; and even the proceeds.	- - -	Vol. XIX
10. General right to have bills in a banker's hands at his bankruptcy restored. Difficulty upon the distinction (in <i>Bolton v. Puller</i> ) not admitting that right against another house, with which the customer had not dealt, but composed of some of the firm.	- - -	XIX.
11. Paper, not actually applied under a permission to negotiate or discount for limited purposes, remains the property of the remitter.	- - -	XIX.
12. Bills, remitted with power to discount even for general purposes, if not discounted, in the event of bankruptcy remain the property of the remitter.	- - -	XIX.
13. Distinction between discount and deposit of bills; depending on, not the mere fact of indorsement, but the intention to make an absolute transfer, giving full power to go against all parties on the bills; or merely to enable the person, with whom they are deposited, to receive the amount from the other parties. Indorsement <i>prima facie</i> evidence of the former; unless the object of mere deposit is clearly shewn. <i>Ex parte Twogood</i> .	- - -	XIX.
14. Debt discharged by a bill, taken as a discharge and satisfaction: otherwise not until payment. <i>Ex parte Hodgkinson</i> .	- - -	XIX.

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#### ACCEPTANCE.—DISCHARGE.—INDORSEMENT.—NOTICE.

##### ACCEPTANCE.—1. Undertaking by letter.

1. A letter, undertaking to accept bills, held an acceptance. *Ex parte Dyer*.

V

##### DISCHARGE.—1. } Of drawer by compounding, &c. with acceptor. 2. }

1. Holder of a bill of exchange, discharging the acceptor by receiving a composition, cannot come upon the drawer. *Ex parte Wilson*.
2. Holder of a bill, giving time to the acceptor, discharges the drawer.

##### INDORSEMENT.—1. } Effect, as authority to discount or pledge. 2. }

1. Effect of indorsement, as an authority to discount or negotiate bills.
2. Effect of indorsement, special or in blank, as an authority to pledge as well as discount.

##### NOTICE.—1. Of dishonour, must come directly from holder. 2. Early, of dishonour, good. 3. Of dishonour to bankrupt before assignment.

1. Notice, that a bill is dishonoured, to effect a discharge, must come directly from the holder. *Ex parte Barclay*.

## BILL OF EXCHANGE.—BILL, PRAYER OF.

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2. Immediate notice of a bill dishonoured at an early hour, good. *Ex parte Moline.* - - - - - XIX. 216
3. Notice of a dishonoured bill to a bankrupt, as drawer, before the choice of assignees, good. *Ex parte Moline.* XIX. 216

See *Bankrupt* 12. (*Lien* 4.) (*Proof* 15. 16. 18.) (*Reputed Owner* 8.) *Deposit* 1. 2. *Injunction* 24. *Notice* 13. *Principal and Surety* 27. *Short Bill.*

## BILL OF INJUNCTION.

See *Practice* 45.

## BILL OF INTERPLEADER.

See *Interpleader.*

## BILL OF LADING.

See *Consignment* 1.

## BILL OF REVIEW:

1. For error, where none: costs of course.
  2. Refused under circumstances.
  3. Not to introduce a new case; which with reasonable diligence might have been on the record.
  4. Grounds.
1. Costs of course upon a bill of review for error; where no error in the decree. *Bolger v. Mackell.* - - - V. 509
  2. Petition for leave to file a bill of review after a decree; affirmed on re-hearing, and pending an Appeal to the House of Lords, for the purpose of introducing evidence in answer to evidence, admitted by surprise, viz: not in answer to an interrogatory, nor the subject directly in issue, the decree not being made upon that evidence, was refused with costs. *Willan v. Willan;* XVI. 72
  3. Bill of review, or a supplemental bill in nature of it, where the decree has not been enrolled, upon new evidence, discovered since publication, not permitted, to introduce a new case; of which the party was sufficiently apprised to enable him with reasonable diligence to have put it upon the record originally. *Young v. Keighly.* XVI. 348
  4. Grounds of bill of review: error apparent: new evidence; discovered since publication, as to a material fact. - XVI. 350

See *Practice* 19. *Review.*

## BILL OF REVIVOR.

See *Costs* 9. 10. 21. *Practice* 129. 130.

## BILL OF REVIVOR AND SUPPLEMENT:

See *Pleading* (*Demurrer* 25.) *Review* 1. 3.

## BILL OF SALE.

See *Lien* 29.

## BILL, PRAYER OF.

See *Pleading* 58:



BILL PRO CONFESSO.

See Decree. Practice 104. 105. 106. 116. 131. 205. 308.

BILL, SHORT.

See Banker 2. Bankrupt (Lien 2. 3.)

BILL, SUPPLEMENTAL.

See Pleading 28. 29.

BILL, TAXED.

See Bankrupt (Costs 1.)

BILL TO PERPETUATE TESTIMONY.

- 1. Of any interest, however slight.
- 2. Not for next of kin of lunatic: nor writ *de ventre inspiciendo* for heir: but lies for interest created by their contracts.
- 3. Not of right immediately barrable.
- 4. An interest necessary: minuteness or remoteness no objection.

- 1. Bill to perpetuate testimony of the legitimacy of the plaintiffs, entitled in remainder in tail after an estate for life: demurrer by the seventh and eighth in remainder after the plaintiffs and the other defendants, all infants, over-ruled; any interest, however slight, being sufficient. *Lord Dursley v. Fitzhardinge Berkeley.* -
- 2. The next of kin of a lunatic, however hopeless his condition, have no interest whatever in the property; and therefore cannot sustain a bill to perpetuate testimony. So an heir apparent cannot have a writ *de ventre inspiciendo*. But they may contract upon their expectations; and may perpetuate testimony with reference to the interest so created. - - - - -
- 3. The Court will not perpetuate testimony of a right, which may be immediately barred by the defendants. - - -
- 4. To support a bill to perpetuate testimony the plaintiff must have an interest: but the minuteness or remoteness of it is no objection. A mere contingency, however near and valuable, (with the exception of the case of a wager,) the expectation of issue in tail, heir apparent, or next of kin of a lunatic, is not sufficient. Therefore a demurrer to a bill by tenant in tail in remainder and his issue to perpetuate testimony of the validity of his marriage, allowed. Whether a bill could be maintained by the trustees to preserve contingent remainders, representing also the legal inheritance of the whole estate, *quære.* *Allan v. Allan.* - - - - -

VI

VI

VI

XV

See Pleading (Demurrer 4.)

BIRTH.

See Domicil 2.

BISHOP.

See Resignation of Living 2. 3.

**BLOOD.**

*See Proximity of Blood.*

**BOND.**

1. On condition performed takes effect from the original delivery as an escrow notwithstanding death.
  2. By *fême* unmarried as escrow, to be delivered on condition, performed after marriage.
  3. } Joint held several.
  4. }
  5. }
  6. *Pro turpi causâ* void.
  7. No relief to obligor; by whose delay interest exceeds the penalty.
  8. }
  9. } By mistake joint only, or several only, rectified.
  10. }
  11. } Presumption of payment may be repelled. Objections
  12. } to it.
- 
1. Bond delivered to a third person, to be delivered to obligee on performance of condition, takes effect on performance from original sealing and delivery; though obligor and obligee both dead. - - - - I. 275
  2. Bond by *fême*, delivered to a stranger before her marriage, to be delivered on condition, good, though condition performed after marriage. - - - - I. 275
  3. Joint bond considered as joint and several. *Thomas v. Frazer.* - - - - III. 399
  4. Joint bond held several against creditors in the administration of assets. *Burn v. Burn.* - - - - III. 573
  5. Joint bond held several in bankruptcy. - - - - III. 575
  6. Bond in consideration of future cohabitation void at law. - - - - III. 371
  7. No relief, where the interest goes beyond the penalty of a bond, if occasioned by the delay of the plaintiff, the obligor. - - - - VI. 92
  8. Ground of the case of a bond, by mistake joint only, instead of joint and several. The relief upon the intention. - - - - IX. 125
  9. Where a man executes a bond, meaning it to be the joint bond of himself and another, who does not execute, it is the several bond of the former: but he may have it delivered up; as contrary to the intention. - - X. 222
  10. Mistake by making a bond joint only, instead of joint and several, rectified in equity and bankruptcy. - X. 227
  11. The presumption of payment of a bond after twenty years may be repelled by evidence, that the obligor had no opportunity or means of paying. *Fladong v. Winter.* XIX. 196
  12. Objections to the presumption of payment of a bond: the fluctuation of credit; and the circumstance of the security remaining with the obligee; a circumstance of great weight. - - - - XIX. 199

**TACKING.—1.** Not against creditors.

1. Bond not to be tacked to a mortgage against creditors.

*Hamerton v. Rogers.* - - - - -

See *Annuity* 9. *Apportionment* 5. *Bankrupt (Interest)* 1.)  
*Confirmation* 1. 2. *Consideration* 6. *Contract* 47. *Evi-*  
*dence* 5. *Gift* 2. 3. *Interest* 23. 30. *Jurisdiction* 16.  
*Lost Bond.* *Presumption* 12. *Principal and Surety*  
 11. 12. 22. *Profert.*

### BOND OF RESIGNATION.

See *Resignation.*

### BOND, PRO TURPI CAUSA.

See *Bond* 6. *Consideration* 1.

### BOND, VOLUNTARY.

See *Consideration* 1.

### BONUS.

See *Bank Stock* 1. 2.

### BOOKS.

See *Copyright.* *Evidence* 56. *Principal and Agent* 30.

### BOOKS OF BANK OF ENGLAND.

See *Evidence* 48.

### BOROUGH OF SOUTHWARK.

See *Jurisdiction* 20.

### BOUNDARIES.

1. Relief on duty to keep them distinct.

1. Ground of relief upon confusion of boundaries; that  
 there was a duty upon the defendant to keep them dis-  
 tinct. - - - - - I

See *Charity* 26. *Discovery* 2. *Tenant* 1.

### BREACH OF COVENANT.

See *Covenant* 6. 7. 8. *Forfeiture* 3. 6. *Injunction* 6. *Land-*  
*lord and Tenant* 18. 56.

### BREACH OF TRUST.

See *Trust* 63. 65.

### BREWERY.

1. Management by the Court.

1. The Court sometimes takes the management of a brewery  
 out of the hands of the parties. - - - - -

See *Contract (Specific Performance)* 64.)

### BREWHOUSE.

See *Nuisance* 2.

### BRICKS.

See *Nuisance* 4.

**BROKER.**

*See Principal and Agent 25.*

**BUILDING.**

*See Landlord and Tenant 35. Repair 1.*

**BY-LAW.**

*See Corporation 5. 7. 8. 9.*

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**CALENDAR.**

*See Copyright 12.*

**CAMBRIDGE.**

*See Copyright 4.*

**CANAL.**

*See Injunction 26.*

**CANCELLATION.**

*See Will 284. 287.*

**CAPITA, DISTRIBUTION PER.**

*See Distribution 2. 3. Will 245.*

**CAPTAIN OF SHIP.**

*See Ship.*

**CARGO.**

*See Ship 4.*

**CASH.**

*See Will 272.*

**CATCHING BARGAIN.**

*See Heir 3.*

**CERTIFICATE.**

*See Bankrupt (Partner 6.)*

**CERTIFICATE OF MASTER OR SIX CLERK.**

*See Practice 246.*

**CESTUI QUE TRUST.**

*See Guardian and Ward 5. Trust.*

**CHAMPERTY.**

1. Defined. Not confined to Courts of Law.
2. Bond, near it, though not strictly, set aside.
1. Assignment to navy agents of part of the subject of a prize suit, then depending, void; amounting to champerty: viz. the unlawful maintenance of a suit in consideration of a bargain for part of the thing, or some

profit out of it; which is not confined to Courts of  
Common Law. *Stevens v. Bagwell.* - - - - - X

2. Bond set aside; as, though not strictly champerty, near it. XVI

*See Attorney and Solicitor (Attorney and Client 12.) Main-  
tenance (of Suit 3.)*

### CHANCELLOR.

*See Bankrupt 35 (Mortgage 2.) Lunacy 8. 62. 63. 66.  
Practice 326.*

### CHANCELLOR OF THE DUCHY OF LANCASTER.

*See Practice 142.*

### CHANCERY.

#### JURISDICTION.—OFFICE OF REGISTER.

JURISDICTION.—1. On mistake.

1. To rectify mistakes is the peculiar province of the Court  
of Chancery. - - - - -

OFFICE OF REGISTER.—1. Granted for the Duke of *St. Albans*,  
his heirs, &c. descends to heirs  
general; not with the title: as-  
signable. Limitation of account.

1. The grant of the office of Register of the Court of Chan-  
cery for lives in trust for the Duke of *St. Albans*, his  
heirs and assigns, descends to the heirs general; and  
does not follow the title; and, being assignable, the  
claim of the mortgagee was established, but not to the  
by-gone profits. (See Vol. III. 25.) The Duke being  
trustee, but having obtained possession without title, as  
heir, the Court, though the plaintiff was an infant, in-  
clined not to carry the account farther back than the  
time of filing the bill; if the profits had not been paid  
into Court at an earlier date in the suit instituted by the  
mortgagee. *Drummond v. The Duke of St. Albans.* -

*See Practice 176. Prohibition 3.*

### CHAPEL.

*See Charity 62.*

### CHARGE.

1. Priority. Power, when executed, takes place accord-  
ing to the deed creating it.
2. Raised by mortgage of parts of an estate more than  
sufficient.
3. Estate discharged; though the fund raised misapplied  
by the trustees.
4. Sale included in power to charge.
5. Over-reaching all the limitations.
6. "If the reversion should never fall to testator," con-  
strued personally.
7. Equitable not barred by time, not affording a presump-  
tion of release.

8. Whether reviving debt, barred by the statute.
  9. By will of legacies "hereinafter bequeathed:" those by codicil not included.
  10. Of legacies on land, as auxiliary, distinguished from a portion of the land or its produce, as to the effect of an unattested paper.
  11. } Of a gross sum or debts, out of rents, &c.; not con-
  12. } fined to that mode. Distinction as to debts, legacies, annuities, and costs.
- 
1. Arrangement of charges as to priority. A power, when executed, takes place according to the original deed creating it. *Mosley v. Mosley.* - - - - - V. 248
  2. Charges upon an estate, more than sufficient to answer them, directed to be raised by mortgages of different parts. *Mosley v. Mosley.* - - - - - V. 248
  3. An estate, having once borne a charge in favour of legatees or creditors, is discharged; though the fund is misapplied by the trustees. - - - - - V. 736
  4. Power to charge includes a power to sell. - - - - - VI. 797
  5. Power by marriage settlement to the husband to charge not confined to the immediately preceding limitation of the reversion to him; but held to over-reach all the prior limitations. *Stackhouse v. Barnston.* - - - - - X. 453
  6. Construction of a charge by will, if the reversion should never fall to the testator: viz. if it should not come to him personally, in his life: the charge therefore effectual; though the reversion came to his heir. *Stackhouse v. Barnston.* - - - - - X. 453
  7. Equitable charge on real estate not barred by lapse of time without demand, though considerable; and though at length brought forward under circumstances not favourable; yet not equivalent to, or affording a presumption of, a release. Account of the interest against a tenant for life; not limited to six years. *Stackhouse v. Barnston.* - - - - - X. 453
  8. Whether a charge by will for payment of debts revives a debt, barred by the Statute of Limitations, *quære?* *Stackhouse v. Barnston.* - - - - - X. 453
  9. Trust of a term by will to pay the several legacies "hereby given," and also "the several other legacies hereinafter bequeathed." The subsequent part of the will contained a few small legacies; and a codicil, unattested, directed to be taken as part of the will, reciting, that the legacies given by the will to the testator's daughters were not an adequate provision, gave each of them a farther legacy, "in addition to the said legacies" given them respectively by the will. The legacies by the codicil are not charged upon the real estate. *Bonner v. Bonner.* - - - - - XIII. 377
  10. Distinction between legacies, charged on the land as an auxiliary fund, and a portion of the land, or its pro-

- duce, when directed to be sold. An unattested paper has effect in the former case: not in the latter. V
11. A gross sum to be paid out of rents and profits; the trustees, if the trust requires payment, not confined to annual profits. XV
12. Devise for payment of debts by rents and profits out of the Statute of Fraudulent Devises; but a gross sum for that purpose not limited to annual rents; but to be paid with all convenient speed. Distinction between debts and legacies and annuities; but the same provision for all is evidence, although not conclusive, that all are to be paid in the same way. The same inference as to costs, directed to be paid in the same manner; exonerating the fund generally liable in the first instance. X
- See *Assets* 19. 20. 21. 26. 31. 39. *Devise* 24. *Discharge*.  
*Exoneration* 15. *Implication* 2. *Legacy* 5. 26. *Merger*  
 1. 7. 8. 9. *Power (Appointment* 38.) *Purchase* 18.  
 21. *Revocation*. *Trust (Resulting* 3.) *Vesting* 8.  
*Will* 92. 94. 108. 188.

## CHARGE AND DISCHARGE.

1. Executor not discharged by affidavit of payments to testator.
  2. } Discharge, when stated with the charge as one trans-
  3. } action: not separate.
  4. }
1. Executor, charged by his answer, not permitted to discharge himself by his affidavit of payments to the testator in his life. *Ridgeway v. Darwin*. V
  2. Admission of the receipt of sums, which sums he had paid, &c. a good discharge. V
  3. A party, charged by his answer or examination, cannot discharge himself by it, unless the whole is stated as one transaction; as, that on a particular day he received a sum, and paid it over: not, that upon a particular day he received a sum; and on a subsequent day he paid it over. *Thompson v. Lambe*. V
  4. Charge by admission discharged only by shewing the application immediate on the receipt of money, as one transaction; not by distinct independent items on the other side of the account. *Robinson v. Scotney*. X
- See *Bill of Exchange* 14. (*Notice* 1.) *Practice* 55.

## CHARITY.

1. Stock not appropriated in specie.
2. Administration taken from foreigners.
3. Administration by general direction to trustees.
4. The most general executed.
5. Power survives.
6. Takes a surplus and increase against the heir.
7. House to be taken for a school, void.



8. } Executed *cy pres*.
9. }
10. Direction varied under commission.
11. Presumptions in favour of.
12. Executed *cy pres*.
13. Under general power not executed.
14. } Executed *cy pres*.
15. }
16. Heir not entitled to rents before execution.
17. Executed *cy pres*.
18. Executed on trustee's laches.
19. For Queen Anne's Bounty void.
20. Takes a surplus against the heir.
21. Execution *cy pres* restrained.
22. Secured by mortgage void.
23. Legacy to discharge a mortgage on a chapel void.
24. Mortgage of turnpike tolls within the statute.
25. For purchase of land void.
26. For founding *Downing College, Cambridge*.
27. For building or purchasing a chapel; the overplus, if any, for other charitable uses, void.
28. Long lease at great under-value, set aside.
29. Execution *cy pres*; distinction whether by Sign Manual or the Court.
30. Power of the ordinary formerly.
31. } Execution *cy pres*: the mode failing; or by applica-
32. } tion of a surplus.
33. Takes an increase of revenue.
34. Bequest to poor relations.
35. Bequest for re-building, &c. alms-houses, confined to those already in *mortmain*.
36. "To erect" imports purchase.
37. Under award consent of Attorney-General or inquiry.
38. Reference to an individual, not as arbitrator.
39. Object too general.
40. Excepted from the rule, that a trust for uncertain objects results. Application by the King or Court.
41. Derived chiefly from the statute 43 Eliz. c. 4.
42. Under alleged secret trust. Statute of Frauds pleaded.
43. Legacy to build alms-houses and purchase the ground, &c. void.
44. Devise void. As to personal estate executed *cy pres*.
45. Secured on poor and county rates void.
46. } Bad in part, the whole fails.
47. }
48. When and how executed by the Court or Crown.
49. Long lease set aside.
50. Master of Free School to be elected by the chief inhabitants: those at the foundation and the heir of the survivor not to be discovered, Elections declared void by the *Lord Chancellor*, as Visitor, and reference to Attorney-General.
51. Omission in decree corrected without re-hearing.
52. Changed only, where clear the general object would be otherwise destroyed.

53. Proper relief, though not prayed.
54. Execution *cy pres*.
55. Inquiry what other lands charged, upon general suggestion.
56. { Extraordinary relief.
57. }
58. Long lease set aside. Account limited.
59. Distinction between subjects of bill and information.
60. Distinction between disposition by scheme and Sign Manual.
61. In *Scotland*: void as to devise of land: good as to personal property by an option to lay out in the funds. Apportionment of debts, &c.
62. Protestant dissenting chapel.
63. Application of surplus *cy pres*.
64. Exceptions to decree under commission.
65. Statute 43 Eliz. extended to cases in which an Information would lie.
66. General, with preference, but not confined to, poor relations.
67. Legacy to be laid out in land in *Scotland* established.
68. { Long lease of charity land.
69. }
70. Direction to divide an annual sum among poor kinsmen.
71. Legacies charged on real or leasehold estates and money on mortgage void.
72. Removal of Governors of *Harrow* School by the Visitor; in the case of the Crown by petition to the Great Seal. Effect of time against inquiry as to eligibility. Regulation of the revenues. Lease to a Governor, without fraud, set aside. Application of the income by a scheme; having regard to the Founder's directions and the alteration of circumstances. Not reduced to a mere parochial school: admission of foreigners without prejudice to children of the poor inhabitants being directed; and the small number of the latter not proved an abuse. Considerable allowance for repairs according to increased revenue. Education, &c. left to the Governors and Masters. Alterations long acquiesced in presumed by authority. Substantial deviations subject to Visitors.
73. Distinction as to removing Governors of eleemosynary corporation and corporations, trustees.
74. Lease set aside for considerable under-value.
75. Relief without specific prayer.
76. Long lease not without equivalent: much less perpetual renewal.
77. Leases set aside for under-value.
78. Deviations corrected: and surplus applied *cy pres*.
79. Surplus applied *cy pres*.
80. Misunderstanding not a ground of removal.
81. Regulated without complaint.
82. In *Scotland* established.

## CHARITY.

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83. For purposes not specified executed, having regard to those specified.
  84. One species of privileged testaments.
  85. Distinguished from other legacies with reference to the mode and substance.
  86. Distinguished from an ordinary legatee.
  87. To be directed by codicil executed: though no directions.
  88. Favourably construed.
  89. Equality not inferred from "divided."
  90. "For purposes to be named," answered by one.
- 
1. Stock cannot be appropriated to support of a permanent charity; but must be sold, and the money appropriated. *Isaac v. Gompertz.* - - - - - I. 44
  2. On Information administration of a charity under an appointment by the trustees, and a plan confirmed by decree, taken from the parties appointed, being subjects of the United States of *America*, and therefore not now liable to the control of the Court. *Attorney-General v. City of London.* - - - - - I. 243
  3. The only way of administering a charity is under general direction to trustees: in case of misbehaviour there must be a new Information: but the Court will not keep the Information, and execute under it from time to time. *Attorney-General v. The Haberdashers' Company.* I. 295
  4. The most general gifts for charity executed. - - - I. 475
  5. Power to dispose to charities specified survives notwithstanding the death of the person to execute. - - I. 475
  6. Land settled in trust for maintenance of a charity, with special directions as to part of the rents; the land to be let for a certain term subject to a rent to that extent: at the expiration of the lease the surplus with its increase results to the charity under the general trust; not to the heir. *Attorney-General v. Tonna.* - II. 1
  7. Testator gave real and personal estate in trust, that a commodious and proper house should be taken on lease at such yearly rent as should be agreed on, or otherwise as the trustees should think fit, as a school, and that the children and grand-children should be placed there from the age of seven to fourteen, then to be put out apprentices; also that such other children, as the trustees should think fit, should be placed at the same school; and he gave directions as to an inscription, visitation, &c. this trust is void under the Statute as to the general purpose of a permanent charity; but good as to the disposition for the relations to the extent of children and grand-children of such of the stocks specified as were in being at the testator's death; and, while the school is kept open for them, other children may be educated there. *Blandford v. Thackerell.* - II. 238
  8. In administering a charity, though a particular intention

fails, the general intention shall be executed *cy pres*; therefore upon a trust for the vicars of *P.* provided they should be presented at the recommendation of the trustees, the trustees neglecting to recommend, the *Chancellor*, the presentation being in the Crown, presented: held, the vicar was entitled to the benefit of the trust. *Attorney-General v. Boulton*. (See No. 14.)

II.

9. The Court will not execute a trust of a charity in a manner different from that intended; unless it cannot be executed literally; but may in substance by another mode consistent with the general intent: thus where the object was to build a church in the parish of *A.*, and the parish would not permit it, it could not be executed any where else: but where it was to distribute bread to poor persons attending divine service and chanting the donor's version of psalms, though the chanting could not take effect, the rest was executed.

II.

10. Under a commission of charitable uses the direction of the Founder varied: but persons, to whom the benefit of the charity was appointed for life irregularly according to the decree, were permitted to enjoy.

II.

11. Presumptions are to be made in favour of a charity.

II.

12. Where a charity cannot be executed, as directed, but the general purpose appears distinct, and may be in substance attained by another mode, it shall be executed *cy pres*: but a personal bequest attached to a void charity, as an endowment, must fall with its principal. *Attorney-General v. Whitchurch*.

III.

13. The Court will not execute a power given by the testator to trustees to continue his charities or to give any others they should think fit. *Coxe v. Bassett*.

III.

14. The Decree (No. 8) affirmed on Appeal. *Attorney-General v. Boulton*.

III.

15. A college, devisee in remainder after estates for lives, in trust for purposes partly for their own benefit, and very specific with respect to them, held not to have accepted the devise by acts done merely to preserve the fund; and, refusing to accept after the death of the tenants for life, the Master was directed to receive a proposal, in order to have it determined, whether it could be executed *cy pres*. A compromise, applying part of the fund to an establishment at *St. John's College, Oxford*, with which the Merchant Taylors' Company are connected, and giving the rest to the next of kin, was, the Attorney-General consenting, established by decree. The next of kin bound by the compromise, decreed with the consent of the Attorney-General to be carried into execution; and therefore another bill, setting up a farther claim of interest upon the sums to be accounted for by *Trinity Hall*, was dismissed. *Trinity Hall* was held entitled to the legacies of £100; and

- some plate; as being distinct from the other disposition, which they refused to accept. *Attorney-General v. Andrew*, III. 633. *Andrew v. The Master, &c. of The Merchant Taylors' Company*, VII. 223. *Andrew v. Trinity Hall*. - - - - - IX. 525
16. Upon a devise to a good charitable use the heir has no right to the rents and profits accrued, before the devise is carried into effect. *Attorney-General v. Bowyer*. - - - III. 714
17. The general charitable purpose of the testator shall be executed upon the doctrine of *cy pres*; though the particular purpose fails. *Attorney-General v. Bowyer*. - - - III. 714
18. An account decreed, and a Receiver appointed upon the laches of the heirs, substituted by decree as trustees to execute a devise to a charity. *Attorney-General v. Bowyer*. - - - - - III. 714
19. Bequest to the Society for increasing Clergymen's Livings in *England* and *Wales* for the perpetual purpose of increasing their livings: the Governors of Queen Anne's Bounty alone answer the description; and, as all their funds are laid out in land, the bequest is void by the Statute. *Middleton v. Clitherow*. - - - - - III. 734
20. Devise in 1719 to charitable purposes, limiting the sums; there not being objects sufficient to exhaust the whole rents according to the directions of the will, and the whole being appropriated to the charities specified, the surplus was applied to increase them against the claim of the heir. *Attorney-General v. Minshull*. - - - IV. 11
21. The doctrine of *cy pres*, formerly pushed to a most extravagant length, is now much restrained. - - - IV. 14
22. Charitable legacy, secured by mortgage, is void by the statute 9 Geo. 2. c. 36. *White v. Evans*. - - - IV. 21
23. Legacy to the trustees of a chapel for Protestant dissenters, to be applied by them towards the discharge of the mortgage on the said chapel, is void under the statute 9 Geo. 2. c. 36. The mortgage having been paid off by other funds in the testator's life, the Court would not say, the legacy might not have been applied in repairing or sustaining the chapel; but was of opinion it could not be applied to any other charitable purpose. *Corbyn v. French*. - - - - - IV. 418
24. Mortgage of turnpike tolls is within the statute 9 Geo. 2. c. 36. *Knapp v. Williams*. - - - - - IV. 430, n.
25. Bequest of money to enable a trustee for a charity to complete a contract for the purchase of land is void by the statute 9 Geo. 2. c. 36. - - - - - IV. 431
26. Under a devise for founding a new college in the University of *Cambridge*, to be called *Downing College*, the Crown having at length granted the application for a charter and licence, and the University waving the account against the heir at law, who had been substituted as the trustee, farther back than six years, the

*Lord Chancellor*, doubting his authority to confine it, made the decree accordingly upon the terms of their taking an Act of Parliament to confirm it. A commission was directed to distinguish lands intermixed with those devised to the charity; and a Receiver appointed.

*The Attorney-General v. Bowyer.* - - - -

V

27. Trust by will for building or purchasing a chapel, where it may appear to the executors to be most wanted; if any overplus, to go towards the support of a faithful gospel minister, not exceeding £20 a-year; and if any farther surplus, for such charitable uses as the executors should think proper. The whole trust void, not only as to the real estate and a mortgage, but also as to the personal estate; and the real estate went to the heir-at-law, and the personal to the next of kin. *Chapman v. Brown.* - - - -

VI

28. A long lease of a charity estate in 1715 at a great under-value decreed to be delivered up; and an account directed with just allowances. *Attorney-Gen. v. Green.*

VI

29. Bequest to *A.* his executors and administrators, desiring him to dispose in such charities, as he thinks fit, recommending poor clergymen with large families and good characters: *A.* died nine years before testatrix; who had notice of that: executed by the Court by reference to the Master to settle a plan, having particular regard to that recommendation. Upon a re-hearing the decree was affirmed: the *Lord Chancellor* collecting the result of the authorities; that, where there is a general indefinite purpose, not fixing itself upon any object, the disposition is in the King by Sign Manual; but, where the execution is to be by a trustee, with general, or some, objects pointed out, there the Court will take the administration of the trust. The costs of all parties were given out of the fund as between attorney and client. *Moggridge v. Thackwell.* I. 464. VII. 36.

XII

30. Formerly a portion of the residue of every man's estate was applied in charity by the ordinary. - - - -

VII

31. If the general substantial intention of a will is charity, the failure of the particular mode shall not defeat it: but the law will substitute another mode. - - - -

VII

32. Bequest in trust for the poor inhabitants of several parishes; to be applied at times and in proportions, and either in money, provision, physic, or clothes, as the trustees think fit. The fund being very considerable in proportion to the objects, the application was upon the principle of *cy pres* extended for the benefit of the same objects to purposes not expressly pointed out by the will, as instruction and apprenticing of children, against the claim of the next of kin. *The Bishop of Hereford v. Adams.* - - - -

VII



# CHARITY.

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33. An increase of the revenues of a charity applied for the benefit of the charity. *Ex parte Jortin.* - - - VII. 343
34. Bequest to poor relations sustained as a charity. *White v. White.* - - - - - VII. 423
35. Bequest for rebuilding, repairing, altering, or adding to and improving, alms-houses, is valid to the extent of any application upon the land already in mortmain: not, of the addition of other land. *Attorney-General v. Parsons.* - - - - - VIII. 186
36. Bequest to "erect" a charitable foundation imports, that land is to be bought, unless the will manifests a purpose, that it is to be otherwise procured. - - - VIII. 191
37. The Court will not act under an award in a charity cause without the consent of the Attorney-General, or inquiring, whether it is for the benefit of the charity. *Attorney-General v. Hewitt.* - - - - - IX. 232
38. Reference in a charity cause to a particular person by name; not as arbitrator. *Attorney-General v. Hewitt.* IX. 232
39. Bequest in trust for such objects of benevolence and liberality as the trustee in his own discretion shall most approve, cannot be supported as a charitable legacy; and is therefore a trust for the next of kin. *Morice v. The Bishop of Durham.* - - - - - IX. 399. X. 522
40. Trust, but for uncertain objects, results to those, to whom the law gives property in default of disposition. Exception as to charity. Where a charitable purpose is expressed, however general, the bequest shall not fail on account of the uncertainty of the object: but the particular mode of application will be directed by the King in some cases; in others by this Court. - IX. 405
41. The signification of charity in this Court derived chiefly from the statute 43 Eliz. c. 4. - - - - - IX. 405
42. To a bill by the heir against a devisee, alleging, that the devise was upon a secret trust or undertaking for charitable purposes, against the statute 9 Geo. 2. c. 36. a plea of the Statute of Frauds was ordered to stand for an answer, with liberty to except. *Stickland v. Aldridge.* - - - - - IX. 516
43. Legacy to build alms-houses and purchase the ground; with a residuary bequest to a charitable society, provided they will furnish a piece of ground to build the houses; taking the management; and, if not, substituting trustees, with a direction to procure a piece of ground, &c. The whole void as to the primary object under the statute 9 Geo. 2. c. 36; being to purchase land to build alms-houses; or at least land already in mortmain not being distinctly pointed out; and the secondary object, though alone it might have been good, failing with the principal, with which it was connected. *Attorney-General v. Davies.* - - - - - IX. 535



44. Bequest of the residue of personal estate for the use of the *Welch* Circulating Charity Schools, as long as they should continue, and the increase and improvement of *Christian* knowledge and promoting religion, and to purchase bibles and other religious books, pamphlets, and tracts, as the trustees should think fit, to go to the same uses with those already bought, and to be kept in a house, devised for that purpose. The devise of the house void: the personal bequest sustained, as a general charitable purpose of promoting *Christian* knowledge; to be executed, regard being had, as far as reasonably may be, to the particular charity pointed out; with checks, making it consistent with the establishments of the country, viz. as to unlicensed schools, itinerant preachers, &c. *Attorney-General v. Stepney.*
45. Money, secured by assignment of the poor-rates and county-rates, is within the statute 9 Geo. 2. c. 36; and therefore cannot pass under a bequest to a charity. *Finch v. Squire.*
46. A charity, bad in part, must fail as to the whole; if every part is connected; as a bequest to educate children, the first part of the plan being to build a school.
47. Where the principal part of a charity fails, the whole fails; though part would have been good, if unconnected; as a bequest to an infirmary, or a school, connected with a purpose of building it.
48. The Court has never executed a charitable purpose, unless described by the will; or the property devoted to charity in general. In the latter case the application, either by the trustees, or the Crown, must be to purposes expressed in the statute 34 Eliz. c. 4, or analogous to those.
49. A lease for ninety-nine years of a charity estate, a farm, as a husbandry lease, cannot stand, without proof of a consideration, shewing, that it is fair and reasonable, and for the benefit of the charity. Under the circumstances, long possession permitted, and the defendant being the personal representative, such lease was set aside, without costs, and without imposing an additional rent, previous to the bill; but future cases will not be so treated. *Attorney-General v. Owen.*
50. Petition to the *Lord Chancellor*, as Visitor in right of the Crown, of the Free School of *Woodbridge*: two persons having been elected; the right of election being in the chief inhabitants; and the chief inhabitants at the time of the foundation and the heir of the survivor not to be discovered. Both elections declared void; and a reference to the *Attorney-General* to report, what directions or alterations will be proper as to the mode and right of election, and in the orders, constitutions, and directions, of the schools; as shall seem to him

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- most conducive to the interest of the objects of the charity, and the furtherance of the intention of the donor. *Attorney-General v. Black.* - - - XI. 191
51. In a charity case an omission in the original decree, not declaring the nature of the charity, corrected upon farther directions, without a re-hearing. *Attorney-General v. Whiteley.* - - - XI. 241
52. The nature of a charity can be changed by an application to objects, different from those intended by the founder, only where it is clear, that by a strict adherence to the plan his general object will be destroyed: not upon the notion of advantage to the inhabitants of the place. Therefore, the foundation being a Free Grammar School at *Leeds*, for teaching grammatically the learned languages, the Court refused to permit application of part of the funds to procure masters for French, German, and other establishments, with a view to commerce. *Attorney-General v. Whiteley.* - - - XI. 241
53. In a charity case, though the Information prays wrong relief, the Court will give proper relief. - - - XI. 247
54. Principle of *cy pres*, as applied to a charity; where the precise object cannot be attained. - - - XI. 251
55. General objection by the answer to an Information, that all the terre-tenants of the premises, charged with the charity, are not parties, without any particular description. The Court will direct inquiries, what other lands are charged, &c.; previously deciding the validity of the charge against the defendants before the Court. *Attorney-General v. Jackson.* - - - XI. 365
56. Distinction as to charities. Relief given to a greater extent than to individuals. - - - XI. 365
57. Extraordinary relief against want of form and mistakes of pleading in favor of charities. - - - XI. 372
58. A long lease of a charity estate, in 1760, set aside, the trustees joining in the application, as a breach of trust; not only as against the express directions of the founder, but also, generally, as an improper administration of a charity estate: the relators not desiring to disturb underleases. The account was confined to the filing of the Information, or previous demand. Such cases to be marked with costs. *Attorney-General v. Griffith.* - XIII. 565
59. Trust of a school for the inhabitants of a particular place, not being a free school, is the subject of a bill; not of an Information by the Attorney-General, as a charity. XIV. 7
60. Under a trust by will for charity the disposition must be by a scheme before the Master: but if the object is charity, and no trust interposed, it is by Sign Manual. *Paice v. The Archbishop of Canterbury.* - - - XIV. 364
61. Devise of real estate; to be sold: and the produce with the personal estate upon trust to be laid out in lands, or the funds, subject to the debts and legacies, for the

maintenance of a charity in *Scotland*: void as to the produce of the real estate; valid as to the personal property by the effect of the option. The debts and other charges upon the fund apportioned according to the *Attorney-General v. The Earl of Winchelsea*, (3 Bro. C. C. 373.) *Curtis v. Hutton*. - - - - -

XIV

62. A Protestant dissenting chapel may be the subject of an information by the Attorney-General as a charitable institution. *The Attorney-General v. Fowler*. -

XV

63. Charitable bequest before the statute 9 Geo. 2. c. 36, to the congregation of Presbyterians, to which the testator belonged, for placing out apprentices two poor boys of such as were members of the said congregation, and living in the parish of *St. Martin* in *New Sarum*. The fund, being considerably more than sufficient, the surplus was applied, upon the principle of *cy pres*, to place out sons of members of the congregation within that parish: 2dly, Such boys in other parishes: 3dly, Daughters of members of the congregation, in the same manner: 4thly, Sons of Presbyterians generally; previously to building a school, or other purposes. A proposal in favour of sons of persons, within the parish, of the established religion was rejected. *Attorney-General v. Wansay*. - - - - -

XV

64. Objection to the decree under a commission of charitable uses, as having issued in a case not warranted by the statute 43 Eliz. c. 4, may be in the form of Exceptions. *Ex parte Kirkby Ravensworth Hospital*. - - - - -

XV

65. Authorities for extending the act 43 Eliz. c. 4, to cases, where the governors or visitors are the trustees; or are abusing their powers, though an Information would lie. -

XV

66. Trust by will to pay the income to the testator's wife for life; enjoining her to co-operate with his trustees in carrying his wishes into execution; and directing her with the advice and assistance of his trustees to lay out one moiety in promoting charitable purposes, as well of a public as a private nature, and more especially in relieving such distressed persons, either the widows or children of poor clergymen, or otherwise, as his wife shall judge most worthy and deserving objects; giving a preference always to poor relations. The object is charity in general; with a preference, but not confined, to poor relations: the distribution to be at the discretion of the wife with the advice and assistance, not subject to the control, of the trustees. *Waldo v. Caley*. -

XVI

67. Legacy, to be laid out in land in *Scotland* for a charity, established; being within the exception of the statute 9 Geo. 2. c. 36. *Mackintosh v. Townshend*. - - -

XVI

68. Lease of charity land for eighty years supported as to the interest of a sub-lessee: upon a fair consideration, several years ago: and no notice: except, that it was a

charity estate. As to the original lease, under the circumstances, the length of time, the surrender of a former lease, the terms of which did not appear, the rent reserved, and an expenditure, though not according to the covenant, equally beneficial, inquiries were directed, to ascertain, whether the lease was reasonable; or unreasonable in such a degree that fraud could be inferred. *Attorney-General v. Backhouse.* - -

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69. A lease of charity land for ninety-nine years, as a mere husbandry lease, upon terms, and at a rent, adapted to a lease for twenty-one years, not allowed: nor a building lease for nine hundred and ninety-nine years upon an expenditure, commensurate to a term of ninety-nine years. - - - - -

XVII. 291

70. Devise to *A.* and his heirs; with a direction, that yearly he and his heirs shall for ever divide and distribute according to his and their discretion amongst the testator's poor kinsmen and kinswomen, and amongst their offspring and issue dwelling within the county of *B.* £20 by the year. This is in the nature of a charitable bequest; and, the will being made in 1581, was sustained; and inquiries directed as to the poor relations dwelling within the county of *B.* *Attorney-General v. Price.* - - - - -

XVII. 371

71. Devise of real and personal estate in trust for debts and legacies void under the statute (9 Geo. 2. c. 36) as a charge of charity legacies upon the real and leasehold estates, and money on mortgage: but on a deficiency of assets the other legatees preferred to the heir. *Currie v. Pye.* - - - - -

XVII. 462

72. Information for the regulation of *Harrow* School dismissed as to the removal of Governors, unduly elected according to the Founder's statutes; not being inhabitants: the Court of Chancery having no jurisdiction with regard to either the election, or amotion, of corporators of any description: eleemosynary corporations being the subject of visitatorial jurisdiction; therefore, in the case of the Crown, becoming Visitor for want of an heir of the Founder, the removal of a corporator *de facto* to be sought by petition to the Great Seal: not by Bill or Information. As to the effect of the time, during which the defendants had held their offices, against an inquiry into their original eligibility, *quære?* As to the revenues, including the management of the estates, and the application of the income, inquiries directed; to ascertain, whether the estates are properly and advantageously managed; with a view to prospective regulations; and a lease to one of the Governors, though without fraud, set aside upon general principles, as inconsistent with his duty; charging him with the full value, if exceeding the rent reserved. The appli-

cation of the income, to purposes, partly specified by the Founder's rules, and partly left to discretion, not being in all respects agreeable to the Founder's directions, though with no improper motives, to be ascertained by a scheme; having regard, on the one hand, to the Founder's directions; on the other, to the alteration of circumstances; which might render a literal adherence to them adverse to their general object and spirit. An alteration in the constitution of the School, with the view of reducing it to a mere parochial school, by restraining the number of foreigners, *i. e.* boys not on the foundation, refused: the admission of foreigners, without prejudice to the children of poor inhabitants, being expressly directed; and the small resort of the latter not proved the result of abuse. No objection to encourage attention to parish scholars by an allowance to the master for each. The expenditure not to be measured by the number of parish boys, who are to be immediately benefited by it; if fairly referible to the purposes of the School. A considerable allowance therefore to the master towards repairs, and a considerable expenditure in enlarging and improving his house for the accommodation of boarders, considered upon the whole not extravagant, as a benefit from the increased revenue in that shape, instead of an increased salary: nor improper, with reference to the general advantage of the School. The course of education and internal discipline left to the Governors and Masters. The Governors being expressly authorized to alter the Founder's rules, alterations, long known and acquiesced in, presumed to have been by their authority; though the precise order does not appear. Any substantial deviation from the principle and purpose of the Institution the subject of visitatorial interposition. *The Attorney-General v. The Earl of Clarendon.* - - -

XVII.

73. Governors of an Eleemosynary Corporation, even where their election might be said to be a fraud, not removed without a petition to the *Lord Chancellor* in his visitatorial capacity: but Corporations, constituted trustees, have sometimes been by decree divested of their trust for an abuse of it; as any other trustees. - - -

XVII

74. Lease of a charity estate set aside for under-value, if considerable. An under-lease, at a fine, not conclusive; part being ascribed to the good-will of a trade established, and repairs. Inquiry directed, whether the rent was fair and adequate; distinguishing, how much of the premium on the under-lease resulted from the good-will and repairs, and how much from the value of the lease above the rent reserved to the charity. *Attorney-General v. Magwood.* - - -

XVII

75. The proper relief given upon an Information for a charity without a specific prayer. *Attorney-General v. Brooke.* - - - - - XVIII. 319
76. Trustee for a charity cannot without an adequate consideration let for ninety-nine years; not being the ordinary course of provident management: much less with covenant for perpetual renewal without an equivalent for the inheritance. - - - - - XVIII. 326
77. Leases of charity estates for twenty-one years, the lessor's being not mere trustees, but having also a beneficial interest, set aside as breaches of trust by under-value. *Attorney-General v. Wilson.* - - - - - XVIII. 518
78. Decree on Information; correcting deviations from the will of the Founder of a charity school, by separating the school from the master's house, taking foreign pupils, so as to deprive the poor children of the master's attention, &c.; and applying the surplus revenue, beyond the maintenance of the existing objects, arisen since the Founder's death, *cy pres*, to the same uses; comprehending every object, the poor children, the master's salary, and the alm's-people. *Attorney-General v. Cooper's Company.* - - - - - XIX. 187
79. Charitable fund exhausted by the declared object of the Founder: a subsequent surplus from the improved annual value applied *cy pres* by the Court; with that view reserving farther directions. - - - - - XIX. 189
80. Failure of duty from misunderstanding not a ground of removal. - - - - - XIX. 193
81. The Court, regulating a charity, acts without complaint, if there is cause for it. - - - - - XIX. 194
82. Decree establishing a charity in *Scotland.* *Attorney-General v. Lepine.* - - - - - XIX. 309
83. Testator directs the residue of his effects to be divided for certain charitable purposes, named by him, "and " other charitable purposes as I do intend to name " hereafter after all my worldly property is disposed of " to the best advantage." Codicil naming no other purpose. A bequest to charity; to be executed by the Court, having regard particularly to the objects specified. *Mills v. Farmer.* - - - - - XIX. 483
84. Privileged testaments; for charity, one species; construed otherwise than wills generally. Thus a charge for a charity in a paper, not found, established: so, if found cancelled, presumed unadvisedly. - - - - - XIX. 485
85. Although the mode, in which a legacy is to take effect, is in many cases of the substance, where charity is the object, that is the substance; and the Court provides a mode, not provided for any other legatee; as where the person to appoint dies without appointing; and where the mode is illegal; for instance, to a superstitious use; as in the case of the *Jewish Synagogue*, &c. XIX. 486



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|---|----------|
| 86. Distinction between legacy to a charity and to an ordinary legatee; who must be sufficiently described and pointed out. - - - - -                                     | XIX. 487 |
| 87. Bequest to such charitable uses as testator shall by codicil, &c. direct: if he leave no direction, this Court disposes to such charitable uses as it thinks fit. - - | XIX. 487 |
| 88. Favorable construction of a charitable bequest. - -   | XIX. 487 |
| 89. From the word "divided" in a charitable bequest no necessary inference of equality. - - - - -   | XIX. 490 |
| 90. Bequest to such charitable purposes as the testator shall name, answered by naming one. - - - - -   | XIX. 490 |

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**COSTS.—JURISDICTION.—SUPERSTITIOUS USE.—VISITOR.**

**COSTS.—1. Not on information dismissed.**

**2. Beyond taxed.**

**3. Between attorney and client to the heir.**

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|---|-----------|
| 1. On Information for charity, the relator appearing to have no title, there can be no decree but to dismiss the Information; and in that case costs cannot be given out of the charity. <i>Attorney-General v. Oglander.</i> - - | I. 246    |
| 2. In charity cases the Court often gives the relators costs beyond the taxed costs. - - - - -  | VII. 425  |
| 3. In a charity cause costs as between attorney and client to the heir, making no improper point. <i>Currie v. Pye.</i>   | XVII. 462 |

**JURISDICTION.—1. Not over charity regulated by Governors under a charter; unless with management of the revenues abused.**

**2. Since Queen Elizabeth.**

**3. Of the Court on abuse in management of the revenues; and on appointment to offices, the heir being lunatic, by petition to the Chancellor, as visitor.**

**4. On petition under stat. 52 Geo. 3.**

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|--|----------|
| 1. The general controlling power of the Court over charities does not extend to a charity regulated by governors under a charter; unless they have also the management of the revenues; and abuse their trust; which will not be presumed; but must be apparent or made out by evidence. The Foundling Hospital is an institution of this kind; therefore on motion injunction to restrain the governors from building round it refused; breach of trust or probability of it not being made out; and held not in nature of waste to turn meadow into buildings, unless clearly injurious. <i>Attorney-General v. The Governors of the Foundling Hospital.</i> - | II. 42   |
| 2. The jurisdiction of the Court of Chancery upon Informations for establishing charities arose since the reign of Elizabeth. - - - - -  | III. 726 |



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**Jurisdiction of the Court of Chancery in the case of abuse of a charity upon the receipt and management of the revenue by the governors; the visitor, as heir of the founder, being generally one; and for a considerable time, while there were no governors, without authority. The heir being a lunatic, the order, vacating irregular appointments of governors and a schoolmaster and for filling up those offices, was made upon petition to the *Lord Chancellor*, as visitor. Under the information an inquiry and account were directed as to leases of the charity estate, without involving the charity in a general account to a remote period; and a general account of the more recent period, limited to the time, when the Information was filed; with costs. *Attorney-General v. Dixie*. - - - - -**

XIII. 519

**Regulation of charities by petition, under stat. 52 Geo. 3. c. 101. - - - - -**

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**PERSTITIOUS USE.—1. For educating, &c. in the Roman Catholic faith, in the Crown by Sign Manual.**

**1. Residuary bequest for the purpose of educating and bringing up poor children in the Roman Catholic faith void. The fund does not go to the next of kin; but is in the disposition of the Crown to some other charitable use by Sign Manual. *Cary v. Abbot*. -**

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**ITOR.—1. No general appointment from special powers without general visitatorial power.**

**2. From clear power to interpret the statutes.**

**1. No general appointment of visitor, excluding a Commission of charitable uses under the statute 43 Eliz. c. 4. from special powers, that would fall within the general visitatorial power; as powers to the Ordinary to interpret and determine doubts upon the statutes; of amotion and punishment, and of appointment, to the Ordinary, and to the Dean and Chapter of York, in certain cases, &c. the whole visitatorial power, particularly as to the administration of the landed property, not being intended to be given to the Ordinary, as visitor. *Ex parte Kirkby Ravensworth Hospital*. -**

XV. 305

**Power, clearly given, to interpret and determine doubts upon the statutes, may itself constitute visitatorial power. - - - - -**

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  4. Personal. Possession the criterion of title. Distinction as to land.
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  2. Jurisdiction for specific delivery of a chattel, the value of which is not to be estimated by damages. - - - X. 163
  3. Jurisdiction by bill in equity for the delivery of a specific chattel. *Lowther v. Lord Lowther.* - - - XIII. 95
  4. Possession the criterion of title to a personal chattel. The property therefore changed by sale in market overt. That rule adopted by the bankrupt law. Distinction as to land; possession not even *prima facie* evidence. XIII. 122  
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1. *Chester*, not having been within the province of *York* at the time of Hen. 8, is not within the custom. - - - III. 338

## CHILD.

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2. *En ventre*; limitation to.

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## CHOSE IN ACTION.

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1. *Choses in action*, viz. stock, debts, &c. are not liable to creditors: they cannot be taken on a *levari facias*; and cannot be touched in equity. *Dundas v. Dutens.* I. 197  
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1. Agreement for occupation lease of a farm void.
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1. An agreement in 1800 for a lease of a farm to a clergyman for the purpose of occupation is void under the statute 21 Hen. 8. c. 13. *Morris v. Preston.* - -
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1. Marriage before retirement of the officer necessary.
1. To entitle the widow of an officer in the *East India Company's* service to Lord *Clive's* bounty the marriage must have taken place, before he retired from the service. *M'Kenny v. The East India Company.* - -

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- I. Jurisdiction upon a contract concerning an estate in a colony: but the question upon the construction of the contract, for a security by way of mortgage, having been before a Court of competent jurisdiction in the colony, and a foreclosure and judicial sale directed, the allegations of fraud merely general, and denied, an injunction was refused. *White v. Hall.* - - -**

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- 1. The execution of the Commission in a cause is the act of the Court, carried on by its ministers. - - -**

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- 2. Commission not allowed to executor, no charge on that account having been made in testator's life. *Bruere v. Pemberton.* - - -**

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3. As to the admission of a new plea and proofs.	
4. Not on a different conclusion of fact.	
1. Application for a Commission of review to rehear a sentence of the Prerogative Court upon a will affirmed by the Delegates, referred to the <i>Lord Chancellor</i> ; who certified against granting the Commission; on the ground, that the case did not furnish any such doubt with reference to the facts, or to important points of law, as made it expedient to grant the Commission; which is prayed of the grace and benignity of the Crown, regulated by sound discretion; usually withholding it upon grounds of public expediency, unless there are very cogent reasons for believing, that the sentence is founded on error in fact or in law; or, unless the doctrines of law, on which it is supposed to be founded, are so questionable and important as to make it clearly fit, that they should be considered in the most solemn manner. <i>Eagleton and Coventry v. Kingston.</i>	VIII. 438
2. Grounds of granting a Commission of review. - - -	VIII. 465
3. Whether a Commission of review can be granted with a clause, admitting a new plea and new proofs, <i>quære</i> . At least the memorial ought to contain allegations, and a special prayer. - - - - -	VIII. 466
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1. Discharge from a commitment for a supposed contempt in bankruptcy; which failed with the proceeding on which it was founded. Subsequent detainers stand; according to the practice at law. *Ex parte Dumbell.* X. 328
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1. Upon a composition a private agreement by some creditors for additional security, though for no greater sum, void. *Ex parte Sadler.* - - - - - XV. 52
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  5. Uncertain.
  6. Against signing an agreement to sell, &c. broken by taking the benefit of an Insolvent Act.
  7. Conditional limitation over established on failure of the first devisee.
  8. Not enforced by enlarging forfeiture on election.
  9. Precedent.
  10. Distinguished from limitation.
  11. Precedent, within six months after decease, held exclusive.
  12. Subsequent, not preventing payment.
  13. Relief against breach by act of trustee, whether at law?
  14. Construction the same in law and equity: but distinction between performance and relief.
1. Words of restraint, unless there is a provision for the consequence of violation, operate only as a recommendation. - - - - -
  2. A condition, inconsistent with the gift, is void; therefore upon a bequest to *A.* for life; and after his death to his heirs, executors, &c. but if he attempts to dispose of the principal, over, he takes the absolute interest; and the condition, being inconsistent with it, is void. *Bradley v. Peixoto.* - - - - -
  3. Condition, that tenant in fee shall not alien, or that tenant in tail shall not suffer a recovery, is void. - - -
  4. Devise on condition of paying £500 in six months, upon trust to pay the interest to the devisor's wife for life; and after her death the principal according to her appointment in writing, with witnesses, whether sole or married, provided she shall release her dower within six months; and in case of her marriage without consent of the trustees one moiety to go over: the wife, who took other interests under the will, died within the six months, not having married, nor released dower. The £500 did not vest in her. *Croft v. Slec.* - - -

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III. 325

IV. 60



5. Promissory note to pay, when the circumstances of the drawer will admit without detriment to himself or family, creates no debt. *Ex parte Tootell.* - - - - - IV. 372
6. Bequest of an annuity, with condition to fall into the residue upon signing an instrument, agreeing to sell, assign, charge, or dispose of, or empower any person to receive, &c. in the most comprehensive terms. The condition broken by taking the benefit of an Insolvent Act. *Shee v. Hale.* - - - - - XIII. 404
7. Conditional limitation over, if the first devisee should refuse or neglect to comply with the condition: viz. within six months after the testatrix's death to release all demands upon her as executrix of *A.* or otherwise, established: the failure arising from the act of the first devisee, as heir at law, contesting the will; and the union of the character of executrix with that of devisee over is no objection. *Simpson v. Vickers.* - - - - - XIV. 341
8. Condition in a will not enforced by enlarging upon the doctrine of election a forfeiture expressed. - - - - - XIV. 383
9. Legacy to *A.* to be paid to her as soon as she shall attain twenty-one, and in case she shall live to that age, and not otherwise; or upon her marriage with consent of the executors, and not otherwise: but in case she shall die, before she shall have attained twenty-one, or be married with such consent, over. A condition precedent; and by her marriage under age without consent, one executor being dead, and the other resident abroad, reduced to the single contingency of her attaining twenty-one. *Knight v. Cameron.* - - - - - XIV. 389
10. Legacy in trust to pay the interest to the separate use of *A.* for life; and, after her decease, as to the capital for her children: if no child, to pay the interest to her husband during his life; and from and after his decease, in case he shall become entitled to such interest, then to pay the principal to other persons. Though the husband, having died during his wife's life, never became entitled to the interest, the limitation over was established; as distinguished from the case of express condition. *Pearsall v. Simpson.* - - - - - XV. 29
11. Bequest of residue, in trust, in case *A.* shall within six calendar months after the testator's decease give security not to marry *B.* then, and not otherwise, to pay to the children of *A.*; with a proviso to go over, if she shall refuse or neglect to give such security. A condition precedent. The six months are exclusive of the day of the testator's death; therefore, as he died on the 12th of *January*, between eight and nine in the evening, a security given on the 12th of *July*, about nine in the evening, was held sufficient. *Lester v. Garland.* - - - - - XV. 246

**CONDITION.—CONSANGUINITY.**

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- 12. Legacy, on condition to be void in case the legatee should succeed in the event of the death of *A.* without heirs of her body; payment decreed in the life of *A.* and without security. *Fawkes v. Gray.* - - - - XVIII. 131**
- 13. Relief against breach of condition, arising not from the fault or negligence of the party, but the act of the trustees: whether at law, *quære.* - - - - XIX. 17**
- 14. Though there can be but one true legal construction of a condition, a Court of Law cannot hold a condition to be performed in all circumstances, in which a Court of Equity will relieve against the non-performance. - XIX. 22**
- See Bond 1. 2. Election 15. Limitation 1. Marriage (Consent 1.) Vesting 44. 55. Waver 1. Will 20.**

**CONFIDENCE.**

**See Heir 1. 3. Trust 7.**

**CONFIRMATION.**

- 1. Not, under the idea of obligation.**
- 2. Not, if not freely given.**
- 3. Requires clear evidence.**
- 1. Purchase and re-purchase of a legacy expectant on a death: the whole transaction set aside for fraud; and not confirmed by a subsequent bond, and payment of interest for four years; because given under an idea, that obligor was bound by the former transaction: all the deeds set aside; and account decreed. *Crowe v. Ballard.* - - - - I. 215**
- 2. Bond given at full age, and not in distress, but under a notion of honour, will, if attended with money actually advanced, maintain a former bargain however disadvantageous: but it is no confirmation, wherever it is not given freely, as if under distress, or terror, or apprehension from the original transaction, though unfounded. I. 220**
- 3. Nature and effect of confirmation: clear evidence necessary; if fraud has been clearly established. - XII. 373**
- See Attorney and Solicitor (Attorney and Client 12.) Name 4. Fraud 41. Trust 105.**

**CONFISCATION.**

**See Creditor 2.**

**CONFUSION OF PROPERTY.**

- 1. The wilful act of one, the other takes the whole.**
- 1. Case by the old law of a wilful mixture by owner of corn or flour with that of another: the value being unequal, and therefore not to be distinguished, the other took the whole. - - - - XV. 442**

**CONSANGUINITY.**

**See Evidence (Pedigree 5.)**

CONSENT.

See *Baron and Feme* (*Separate Property* 32.)

CONSENT TO MARRIAGE.

See *Marriage*. *Portion* 13.

CONSIDERATION.

- 1. Distinction between voluntary bond and *pro turpi causâ*.
  - 2. Distinction between voluntary covenant and trust created.
  - 3. Limits of relief against security *pro turpi causâ*.
  - 4. Distinction between *nudum pactum* and a promise, on which some act is done.
  - 5. Not necessary between one, undertaking for the debt of another, and the debtor.
  - 6. Surrender of voluntary bond sufficient against creditors.
1. Voluntary bond during cohabitation to a woman previously of a very loose life: soon afterwards another bond, expressly securing a continuance of the connection by an annuity in case of separation. Bill by the executor to have the bonds delivered up was dismissed with costs: the former being considered unimpeached; the latter void at law as *pro turpi causâ*. *Gray v. Mathias*. - - - - - V
2. Distinction as to volunteers. The assistance of the Court cannot be had without consideration, to constitute a party *cestui que trust*; as upon a voluntary covenant to transfer stock, &c.: but if the legal conveyance is actually made, constituting the relation of trustee and *cestui que trust*, as if the stock is actually transferred, &c., though without consideration, the equitable interest will be enforced. *Ellison v. Ellison*. - - - - - VI
3. Whether the Court has gone farther than to restrain enforcing a security *pro turpi causâ*, and has taken the property out of possession of the party, except as to creditors, *quære*. - - - - - X
4. Distinction between a mere voluntary promise, *nudum pactum*, that will not maintain an action, and a promise, upon the faith of which another does some act: as entering into engagements, or paying money; forming a consideration, that will support an action; and therefore establish a debt against assets. *Crosbie v. M'Doual*. XIII
5. Undertaking by one person to pay the debt of another does not require a consideration moving between them. XIV
6. Voluntary bond, though void against creditors, being valid as between the parties, its surrender is a consideration, that will sustain a substituted bond against creditors, unless with a fraudulent design; as by an insolvent, to substitute a valid for an invalid security against creditors. *Ex parte Berry*. - - - - - XIX

## CONSIDERATION.

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### INADEQUATE.—ILLEGAL.—PARENT AND CHILD.

INADEQUATE.—1. Relief against it, if extreme.

2. } Effect; as evidence of fraud.  
3. }

1. Relief in equity upon inadequacy of consideration, so extreme as to satisfy the Court, that there must have been imposition or oppression. *Underhill v. Horwood.*

X. 209

2. Effect of inadequacy of consideration towards constituting fraud. - - - - -

XII. 373

3. Inadequacy of consideration, though not of itself a sufficient ground for setting aside a contract, is, when gross, strong evidence of fraud. - - - - -

XIII. 103

ILLEGAL.—1. Profits of stock-jobbing transactions.

2. Principle on actions out of illegal transactions.

1. Promissory notes given by a stock-broker for the balance of an account of money advanced to him, to be employed in stock-jobbing transactions, contrary to the statute 7 Geo. 2. c. 8. Part of the consideration consisting of the profits upon those transactions, proof under his bankruptcy was restrained to the residue; viz. the money received, which he had applied to his own use. *Ex parte Bulmer.* - - - - -

XIII. 313

2. Principle upon actions, arising out of illegal transactions: if *malum prohibitum* only, the plaintiff may recover; unless it be directly upon the contract precluded.

XIII. 315

PARENT AND CHILD.—1. Slight consideration sufficient between them.

1. Slight consideration between parent and child sufficient even against a purchaser. - - - - -

II. 410

See Annuity 1. (Jurisdiction 7.) Assignment 1. 2. Auction 4. Bailment 1. Bankrupt 35. (Assignment 1.) (Proof 39.) Baron and Feme 57. 95. 96. Construction 5. Contract 92. (Specific Performance 10.) Costs 1. Deed 5. Fraud 17. 42. Jurisdiction 27. Lien 2. Marriage 11. Pleading 42. Power (Of Attorney 1.) Principal and Surety 23. Reversion 1. Trust 6. (Resulting 2.) Voluntary Settlement, &c.

## CONSIGNMENT.

1. Decree according to consignment previous to title accrued.

2. Allowance to consignees acting without a regular appointment.

1. Plaintiff being entitled upon coming of age to the produce of a *West India* estate, bills of lading of consignments previously made were decreed to be delivered up to him. - - - - -

IV. 609

2. Allowance in respect of advances for supplies to a *West India* estate by persons, acting as consignees, not under a

regular appointment, but with permission of the owners, or by one tenant in common; if not upon the ground of lien, by the colonial law, or usage, upon the nature of the subject, requiring expenditure; as in the case of mines, alum-works, &c. distinguished from a mere landed estate in this country. *Scott v. Nisbitt.* - - XIV

See *Practice* 81.

CONSOLIDATION OF TITHE CAUSES.

See *Tithe* 15.

CONSPIRACY.

See *Banker* 3. *Bankrupt* 64.

CONSTRUCTION.

- 1. Upon the whole context.
- 2. Not by acts.
- 3. Restriction not confined to the last antecedent, even in criminal proceedings.
- 4. Not in the nature of the provisions, or speculation on a supposed case.
- 5. } Articles to settle, or covenant to give or leave by will,
- 6. } all personal estate.
- 7. Not by acts.
- 8. Resumption for building under covenant in lease; though it could not be acted upon. General words not restrained: wharfs on a canal appurtenant to warehouses. Compensation for land covered with water, &c.
- 9. The same in every Court.
- 10. } Different, of the same words.
- 11. }

- 1. Instruments to be construed upon the whole context. - II
- 2. A legal instrument is not to be construed by the acts of the parties. *Baynham v. Guy's Hospital.* - - III. 29!
- 3. The rule, that words of restriction are to be confined to the last antecedent, does not hold even in criminal proceedings. - - - - - IV
- 4. An instrument is to be construed without adverting to the nature of its provisions, if legal; or to what they would have been, if a particular case had been contemplated. *Mosley v. Mosley.* - - - - - V
- 5. Articles before marriage for settling real estates of the husband, and also all and singular his personal estate of what nature or kind soever: a proper execution would be by a covenant, that real estate, that should be purchased with the personal, should with respect to the objects of the settlement be considered personal: the settlement therefore, made after marriage, containing no such covenant, and being in other respects a defective execution, real estates, purchased by the husband,

# CONSTRUCTION. — CONSTRUCTIVE NOTICE. 163

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according to the evidence in order to defeat the right of his wife, were decreed to be conveyed by his devisee according to the articles. A gift by him in his life in consideration of service was not disputed : but under the particular circumstances attending the marriage and in the case of an infant the Court appeared to question its validity. *Randall v. Willis.* - - -

V. 262

6. Covenant by a father to give or leave by his will all his personal estate equally among his children does not deprive him of the right of unlimited expense, and of any fair application, even by gift, if absolute and *bond fide* : but a disposition for the purpose of defeating the covenant cannot stand : therefore transfers of stock to one of the children by the father were upon the circumstance of a reservation of the dividends for his life and other evidence of a partial intention to elude the covenant, set aside. *Jones v. Martin.* - - -

V. 266, n.

7. Legal instruments not to be construed by the acts of the parties. - - -

VI. 238

8. Construction of a covenant in a lease, that if the lessor shall be minded to set out any part of the premises for a street or streets, or to set or sell any part to build upon, he may resume upon certain terms. If he resumed, having a *bond fide* intention to build, though that cannot be acted upon, there is no equity for the tenant. 2dly, the generality of the latter words are not restrained by the former to buildings of any particular species ; therefore, a contract with a canal company for the lands resumed was enforced ; warehouses being within the meaning of the lease ; and wharfs, at least as appurtenant, and wanted for the enjoyment of the warehouses. A compensation was decreed for the land covered with water ; and as to towing-paths, and the banks of basins, though strictly subjects of compensation, yet upon a rehearing and after great litigation the Court would not reverse the decree, and direct another reference to the Master, merely on that account. *Gough v. The Worcester and Birmingham Canal Company.* - - -

VI. 354

9. The same construction of instruments in every Court. -

IX. 393

10. Different constructions of the same words, applied to different descriptions of property, governed by different rules. - - -

XIX. 77

11. Different constructions of the same word in a will with reference to the different estates : an intention difficult to attribute. - - -

XIX. 303

See *Infant* 28. *Lease (Renewal 8.) Settlement. Statute*  
1. 3. 4. *Vesting. Will* 219. 313.

## CONSTRUCTIVE NOTICE.

See *Notice* 1.

CONTEMPLATION OF BANKRUPTCY.  
See *Bankrupt* (*Preference* 4.)

CONTEMPT.

- 1. Indemnity against it involves the party giving it.
  - 2. By breach of an order made in the absence of the party present during the motion.
  - 1. An indemnity given against the consequences of a contempt, involves the party giving it. *Ex parte Dixon.* VIII
  - 2. Contempt by breach of injunction by persons, who were present in Court during the motion; though absent when the Order was pronounced. *Hearn v. Tennant.* XIV.
- See *Answer* 6. *Bankrupt* (*Messenger* 2. 3.) (*Privilege* 3.) (*Surety* 3.) *Lunacy* 54. *Mortgage* 48. *Practice* 183. 222. 316. 328. *Privilege* (*Arrest* 3.) *Prohibition* 1. 2. *Receiver* 19. *Register's Office* 2. *Sequestration* 6. *Ward of Court* 1. 6. 7. 8. 12. 13.

CONTINGENCY.

See *Legacy* 7. 8. 12. *Vesting.* *Will* 84. 86.

CONTINGENT DEBT.

See *Bankrupt* (*Proof* 24. 49.)

CONTINGENT INTEREST.

- 1. Bond, on contingencies determinable on obligee's death, to be subject to the uses of his marriage settlement, passes under his bankruptcy.
- 2. Devisable, &c.
- 1. Bond upon marriage to pay a sum of money to the husband; which, upon certain contingencies, to be determined upon his death, was declared to be subject to the trusts of the settlement for his wife and children. Upon his bankruptcy payment was decreed to the assignees. *Studdy v. Tingcombe.* - - - - V.
- 2. Contingent interest devisable, &c. - - - - VII.

See *Vesting.* *Will.*

CONTINGENT LEGACY.

See *Will* 2.

CONTINGENT REMAINDER.

See *Copyhold* 2. 12. *Devise* 32. *Power* (*Appointment* 14.) *Purchase* 16. *Remainder* 3. *Trust* 26. 114. 115. *Will* 49.

CONTRACT.

- 1. Voluntary not executed.
- 2. Effect of deviations in different degrees.
- 3. Parol for settlement on marriage: distinction, if recited.
- 4. } Effect of mutual mistake.
- 5. }
- 6. Small variation not material.



7. Description binding.
8. Unconscientious.
9. Trifling errors in description not material.
10. Compensation for small part, held at will, described as freehold.
11. Construction of Statute of Frauds. Effect of part-performance.
12. Factor bound by notice.
13. Rescinded by new agreement before parting.
14. Raising a trust: except, where it would restore the power to violate it.
15. Private of wife to pay out of separate property.
16. Apparently, not really, usurious.
17. To make mutual wills, proved uncertain and unfair. Evidence of mistake rejected.
18. For a mortgage a lien against creditors.
19. Time material.
20. By letter, without express assent: marriage following immediately.
21. } Time material: but relief on conduct, accident, &c.
22. }
23. Clear, fair, &c. and performance prayed in effect, established.
24. Parol discharged by parol.
25. Rule as to enforcing.
26. By an inaccurate letter, the basis of a settlement.
27. Description defective. Puffing.
28. } Time material. Laches.
29. }
30. Parol, admitted by answer, insisting on the statute.
31. Whether bonds of arbitration out of the statute.
32. Parol, admitted by answer, insisting on the statute.
33. Parol, denied by answer, conclusive.
34. To divide by arbitration. Surveying, &c. not a part-performance.
35. Written, varied by parol, distinguished from subsequent, distinct, agreement.
36. Loss by fire after acceptance of title, but before conveyance.
37. Answer admitting possession under agreement, not clear.
38. With legatee, having taken a mortgage in part-payment, for payment out of the other assets.
39. Alleged as written; proved as parol.
40. After submission to perform answer to amended bill cannot insist on the statute.
41. Extent of decisions for compensation for variance from the description.
42. Written: parol evidence not received.
43. Lease for years determinable.
44. Expenditure permitted under erroneous opinion of title, &c. requires a clear case of bad faith.
45. Disaffirmed by consignee; selling for consignor.
46. Signed by one party.
47. Time not regarded, as at law.

48. From execution the estate in the vendee.
49. Made good for the heir out of the personal estate; if converted in equity.
50. Not part-performed by payment of auction duty.
51. Fraud the ground of part-performance.
52. Required to support a claim under a proviso for resumption for building.
53. On marriage to settle all personal estate possessed during coverture.
54. On representation, not amounting to warranty; and on mistake.
55. Before marriage by parents, &c. binding infants.
56. Vendor for a life annuity dying within half-a-year.
57. Written dissolved by parol.
58. By letter.
59. Whether the name in the body a signature.
60. Signed only by vendor, directing a proper agreement to be prepared, binding.
61. By letter.
62. Compensation for small mistakes.
63. Authority of agent by parol.
64. Failing eventually under a power, effectuated by the interest acquired.
65. Vendor bound by misrepresentation. Abatement.
66. Executed, though inadequate, without fraud.
67. *Roman law*.
68. Bond, a fraud upon it, void.
69. Demise reduced by failure of a condition precedent.
70. Costs discretionary: not, as at law, following the event, except *primâ facie*.
71. Farther evidence before the Master on title.
72. } Mere suspicion no objection to title, appearing fair.
73. }
74. Not by a general description, not specifying the terms.
75. Estate contracted for passes by will, and the subsequent conveyance no revocation.
76. By letters. No objection on Stamp Acts to letters admitted. Draft of bill not evidence: but, defendant refusing office-copy, decree on inspection of record.
77. Distinction, when it may be stamped, paying the penalty, and when no action without stamp.
78. Bargain and sale, not enrolled.
79. Implication from letters; and as to written recognition after marriage of previous promise.
80. Distinction in the Statute of Frauds between agreements and trusts.
81. Not until payment under decree for conveyance on payment.
82. Time not, as at law, essential; and relief discretionary.
83. Against the policy of the law, set aside without evidence.
84. Limits of compensation.
85. Time not immaterial.
86. Reference of title: objection to perform failing.
87. Distinction between mistake of both or one.

88. To entitle heir to application of the personal estate equitable conversion necessary.
  89. By auction within the Statute of Frauds. Whether auctioneer, being also vendor, can be agent for both.
  90. Payment of auction-duty not a part-performance.
  91. Part-performance by taking possession, &c.
  92. Whether from illegal transactions.
  93. Part-performance requires an unequivocal act, importing some agreement.
  94. On valuation by persons appointed by the parties, the Court will not appoint.
  95. At a fair valuation.
  96. Modification of subordinate parts.
  97. Price essential.
  98. Compensation for deviations.
  99. Subject to notice to quit consistent with covenant for holding over after the term.
  100. Delivered up for surprise without fraud.
  101. Distinction between executing, and disturbing, delivering up, and leaving it to law.
  102. When left to law.
  103. With a person intoxicated not aided : nor is mere intoxication a ground to get rid of it. Exceptions.
  104. Sale of a lease requires production of lessor's title.
  105. Treaty protracted, injunction refused to vendor on conduct.
  106. Time waved by protracted treaty.
  107. Distinction in compelling purchaser to take indemnity against a judgment.
  108. Price essential.
  109. Whether part-performance by payment of part.
  110. Part-performance, avoiding the statute.
  111. Distinction between payment of the whole, or part, as applied to a purchase or mortgage.
  112. Determined by stoppage *in transitu*.
  113. Stronger case required for delivering up than for resisting performance.
- 
1. Where deed is not sufficient to pass the estate, but the party must come into equity, the Court never executes a voluntary agreement. - - - - -
  2. Small deviations from a plan agreed upon for building not material ; otherwise if obstinate or corrupt. *Craven v. Tickell*. - - - - -
  3. Parol agreement for a settlement upon marriage cannot be sued on afterwards on ground of part-performance ; but no case of a settlement reciting an agreement before marriage is within the statute. - - - - -
  4. Purchaser not entitled to a conveyance of part, though answering the general description in the advertisement of sale ; as it was not in the contemplation of either party at the time of the purchase or conveyance ; purchaser being referred to a more particular description ; which did not include that part ; and the surrender

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- having been made according to that and from his own instructions. *Calverley v. Williams.* - - -
5. If one party thought he had purchased *bond fide* part of an estate, which the other thought he had not sold, it is ground to set aside the contract. If both understood the whole was to be conveyed, it must; otherwise if neither understood so. - - -
  6. Small variation in a general description of land not material. - - -
  7. Any person, undertaking to describe, bound by the description, whether conusant or not. - - -
  8. Apothecary agreed to give his patient 50 guineas to receive 500 or an annuity of 100, if he should survive a year; which he did: bill against executors dismissed; as plaintiff could not succeed at law; but without costs on account of the money actually advanced; which must have been repaid upon a bill to set aside the agreement. *Priestly v. Wilkinson.* - - -
  9. Agreements for sale of an estate, especially if by auction, depend upon the *bond fides* of the transaction; therefore trifling errors in the description are not material. *Calcraft v. Roebuck.* - - -
  10. Advertisement of an estate for sale by auction described it all as freehold; though a small part was held at will; after execution of articles a treaty for an exchange of that part took place; pending which at the time appointed for completing the purchase purchaser took possession forcibly; but proceeded in the treaty afterwards, till he finally refused to agree to the purchase: on bill of vendor purchase-money agreed to be paid with 4 *per cent.* from the time it ought; but inquiry directed as to what ought to have been the compensation at that time for the part not freehold; that with the outgoings to be deducted. - - -
  11. The same construction at law and in equity upon the Statute of Frauds; and part-performance of a parol agreement takes it out of the Statute. - - -
  12. *A.* agreed to sell goods to *B.* to be accounted for in part of a debt to *B.*; *C.* with notice agreed to sell the goods as factor; not allowed to retain for a debt to him from *A.* *Weymouth v. Boyer.* - - -
  13. Property in a cargo transferred by bill of sale, signed by vendor and vendee; but by a new agreement signed by them, before they parted, that it shall be sold and accounted for by the factor for vendor, it is reduced to agreement; and therefore remedy in equity. *Weymouth v. Boyer.* - - -
  14. Agreement concerning any subject, though in form personal, raises a trust in equity against the party himself, volunteers, and claimants with notice under him; except where the effect would be to restore the power of

# CONTRACT.

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- violating it; as where tenant in tail has suffered a recovery contrary to his covenant. - - - - - I. 478
15. Agreement by wife without knowledge of husband to pay additional rent out of her separate property, good. *Master v. Fuller.* - - - - - I. 513
16. Agreement by *A.* to purchase houses from *B.* for £431. 10s. possession to be given and £200 paid immediately; the rest with interest at *Michaelmas*: but, if not then paid, *A.* to pay "in lieu of interest upon the same a clear rent of £42 *per annum*," out of which was to be deducted interest for the £200 paid: not usurious. *Spurrier v. Mayoss.* - - - - - I. 527
17. Testator by codicil in 1776 reciting, that he had devised his real estate by his last will, dated 25th November, 1752, charged his real estates with his debts, and legacies given by the codicil; and appointed executors: the bill was by devisees of the real estate under another will of 1756, one of whom was a legatee in the codicil; stating, that the will of 1756 was executed in pursuance of an agreement to make mutual wills; that the testator by the death of the other party was bound, if not in law, in honour; and did not mean to revoke the will of 1756, and revive that of 1752; and praying, that the will of 1756 and the codicil might be established, the trusts carried into execution, and the legacy paid: upon an Issue directed the will of 1752 was established; evidence of mistake being rejected; on farther directions the plaintiffs relied on the agreement; and offered evidence in support of it: the bill was dismissed, the *Lord Chancellor* being of opinion, that the relief sought was inconsistent with the frame of the bill; and therefore could not be given under the general prayer; that the evidence ought not to be received; and that upon the evidence the agreement was uncertain and unfair; and therefore not to be executed. *Lord Walpole v. Lord Orford.* - - - - - III. 402
18. Agreement for a mortgage a special lien against creditors. III. 582
19. The time, at which a contract is to be performed, material. IV. 497
20. Settlement decreed according to a letter previous to the marriage, though no express assent: the marriage having taken place immediately, a distinct positive dissent would be necessary to prevent the effect of the letter; and that could be evidenced only by an actual settlement before marriage. *Luders v. Anstey.* - IV. 501
21. With respect to the performance of a contract the time is material. Therefore a bill for a specific performance was upon the gross laches of the plaintiff dismissed with costs. *Harrington v. Wheeler.* - - - - - IV. 686
22. The conduct of the parties, inevitable accident, &c. might induce the Court to relieve against a lapse of the day fixed for completing a purchase. - - - - - IV. 690

23. A question upon the construction of a will, whether the personal estate was wholly or partially disposed of, was not decided; an agreement upon the subject, though the instrument, that was prepared, was not executed, being established as clear, fair, and reasonable, not within the Statute of Frauds, concluded with full knowledge of the circumstances, and not waved; and the bill in effect, though not in terms, praying a performance. *Gibbons v. Caunt.* - - - - -
24. A parol agreement may be discharged by parol. - - -
25. Rule as to enforcing agreements. - - - - -
26. Construction of an inaccurate letter, the basis of a settlement. *Luders v. Anstey.* - - - - -
27. Objections by a purchaser by auction, 1st, that a way round and across a meadow was not specified; 2dly, on account of a bidding for the plaintiff: a specific performance was decreed with costs. *Bowles v. Round.* -
28. A vendor cannot come at any distance of time for a performance: but upon a bill filed fourteen months after the correspondence upon the objections to the title ceased by the defendant's returning no answer to the last letter, calling for a distinct answer, and threatening a bill, and the auctioneer not having been called on to return the deposit, it was referred to the Master. *The Marquis of Hertford v. Boore.* - - - - -
29. The time for performance of a contract is material. -
30. Lord *Loughborough's* opinion, that upon a bill for specific performance of a parol agreement within the Statute of Frauds, the defendant, though admitting the agreement by his answer, may, if he insists upon the Statute, have the benefit of it at the hearing. - -
31. Whether bonds of arbitration are sufficient to take the case of an agreement out of the Statute of Frauds, *quære?* - - - - -
32. Lord *Eldon's* opinion, that a specific performance of a parol agreement cannot be decreed, though the agreement is admitted by the answer; if the defendant insists upon the Statute of Frauds: if he does not, he must be taken to renounce the benefit of it. - - -
33. In equity the denial of a parol agreement within the Statute of Frauds by the answer is conclusive. - -
34. Upon a parol agreement for a compromise and a division of the estate by arbitration acts done by the arbitrators towards the execution of their duty, as surveying, &c. cannot be considered acts of part-performance to sustain the agreement. - - - - -
35. The rule, that a written agreement, within the Statute of Frauds, cannot be varied by parol, does not affect a subsequent, distinct, collateral, agreement. - -
36. Contract for the sale of houses; which from defects in the title could not be completed on the day. The treaty

however proceeded, upon a proposal to wave the objections upon certain terms. The houses being burnt before a conveyance, the purchaser is bound, if he accepted the title; and the circumstance, that the vendor suffered the insurance to expire at the day, on which the contract was originally to have been completed, without notice, makes no difference. A reference to the Master was therefore directed to inquire, whether the proposal was accepted, or acquiesced in, on behalf of the purchaser. *Paine v. Meller.* - - - -

VI. 349

37. Whether the answer, admitting possession taken under the agreement, takes the case out of the Statute of Frauds, where it is not clear what the agreement was, *quære.* The Court endeavours to collect what are the terms. - - - -

VI. 470

38. A legatee, having taken a mortgage in part-payment, subject to an agreement for payment out of the other assets and a resumption of the mortgage, was held entitled to the benefit of that agreement; accounting for the difference of interest. *Sitwell v. Bernard.* - - - -

VI. 520

39. A bill, alleging a written agreement, may be sustained by evidence of a parol agreement. *Spurrier v. Fitzgerald.*

VI. 548

40. After answer, admitting an agreement, and submitting to perform it, the bill being amended as to other circumstances, the defendant was not permitted to take advantage of the Statute of Frauds by the answer to the amended bill; and a specific performance was decreed.

VI. 548

41. In enforcing contracts upon the principle of compensation for a variance from the description the Court has gone so far, to the extent even of wholly defeating the object of the purchaser, that where the principal subject of the contract was all the corn and hay tithes of a parish, and of the hay tithe half was allotted to the vicar, and the other half commuted for a customary payment, the nature of that payment, the extent of meadow, and the possible conversion from arable, not distinctly appearing, the Injunction against recovering the deposit was continued after Answer. *Drewe v. Hanson.* - - -

VI. 675

42. By the rule of law, independent of the Statute of Frauds, parol evidence cannot be received to contradict a written agreement. - - - -

VII. 218

43. Whether a lease for seven, fourteen, or twenty-one years, is determinable at either of the intervening periods at the option of both parties, or of the lessee only, nothing being expressed as to that, *quære?* (a) *Dann v. Spurrier.* - - - -

VII. 231

44. The relief in respect of expenditure under an erroneous opinion of title, or an expectation of a larger interest, or, that the enjoyment would not be disturbed, with the

(a) Determined, that the option is confined to the lessee. 3 Bos. & Pul. 399, 442.



- knowledge and permission of the other party, requires a case of bad faith, clearly made out. In this instance it failed for want of evidence. - - - - - V
45. A. receiving goods under circumstances, that would give him a right to return them, disaffirming the contract, if it would be against the interest of the other to return them, may sell them, considering himself as agent, and bring an action for the difference. - - - - - V
46. An agreement, signed by one party only, good to charge him within the Statute of Frauds. *Seton v. Slade.* - V
47. Time not regarded in this Court as at law: for instance the case of redemption of a mortgage; which cannot be prevented even by special agreement. So upon a mortgage at 5 *per cent.* with condition for 4, if regularly paid, or at 4 *per cent.* to have 5, if not regularly paid: the 5 *per cent.* regarded in this Court only as a penalty to secure the 4; and relief given upon that principle. So in the old cases upon relief against the penalty of a bond, before the jurisdiction at law. - - - - - VII
48. From the execution of the contract the estate is in equity the property of the vendee, descendible and devisable as such. - - - - - V
49. To entitle the heir to the performance of an agreement for a purchase out of the personal estate the agreement must have been binding upon the parties contracting, so that the property was converted in equity before the death. *Buckmaster v. Harrop.* - - - - - V
50. Payment of the auction-duty is not a part-performance taking an agreement out of the Statute of Frauds. - V
51. The ground of the doctrine of part-performance is fraud. V
52. Under a proviso in a lease to deliver possession, if the premises should be wanted for building, a demand on the ground of having entered into a treaty is not sufficient: otherwise, if an agreement was alleged. *Russell v. Coggins.* - - - - - VI
53. Execution of a contract on marriage by bond, with condition to settle all the personal estate, that the husband should at any time during the coverture be possessed of. *Lewis v. Madocks.* - - - - - VI
54. Bill by a husband to have his wife's portion, part of which was invested in stock, made up money, on the ground, either of express contract, or representation, upon which the marriage took place, dismissed: the description by the articles, though generally, "the sum of £4000," referring to that sum as in settlement; and the representation under circumstances not amounting to a warranty; and proceeding upon a common mistake. *Ainslie v. Medlycott.* - - - - - I
55. Agreements before marriage on behalf of infants by parents and guardians binding on the infants. - I
56. Contract for the sale of an estate for a life annuity must

# CONTRACT.

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be executed; though the vendor dies before the end of the first half-year. - - - - -	IX.	246
57. Agreement in writing may be dissolved by parol. - - -	IX.	250
58. Though an agreement is not signed, the party bound by a letter containing the terms, &c. so that by the contents it can be connected and identified with the agreement. - - - - -	IX.	250
59. As to the effect of the insertion of the name in the body of the agreement, as a signature within the Statute of Frauds, <i>quære</i> . - - - - -	IX.	253
60. An agreement in writing for the sale of an estate binding; though signed only by the vendor; and followed by a direction to his attorney to prepare a proper agreement for both parties to sign. <i>Fowle v. Freeman</i> . - - -	IX.	351
61. Decrees founded upon letters, not intended at the time to be a complete, final, agreement. - - - - -	IX.	355
62. Small mistakes or inaccuracies in a contract are the subject of compensation: but that has been extended to a great length. - - - - -	X.	306
63. The authority of the agent may be by parol: though the agreement must be in writing. - - - - -	X.	311
64. Contract by trustees under a power of sale, though by subsequent events it cannot be executed under the power, shall be made good in equity by the effect of the interest, acquired in the estate bound by the contract. - - - - -	X.	315
65. Vendor, representing and contracting to sell, the estate as his own, cannot object, that he has only a partial interest. The purchaser is entitled to as much as he can have, and an abatement. - - - - -	X.	316
66. Contract executed, though the consideration was inadequate; not amounting to fraud; but without costs. <i>Burrows v. Lock</i> . - - - - -	X.	470
67. Principle of the <i>Roman</i> law as to contracts, requiring the price to exceed half the value. - - - - -	X.	475
68. Settlement of a jointure by a father upon the marriage of his son. Bond of indemnity, of the same date by the son to the father, void, as a fraud upon the contract. <i>Palmer v. Neave</i> . - - - - -	XI.	165
69. Demise by a copyholder for one year, and at the end of that term, from year to year for the term of thirteen years more, in all fourteen years, if the lord will give license; and so as there shall be no forfeiture; with the usual covenants in a farm lease. The license is a condition precedent; and, not being granted, there is no lease at law farther than from year to year; and there is no equity upon the circumstance, that the lord purchased his tenant's interest, with notice of the demise, and an express exception of all subsisting leases, or agreements for leases. <i>Lufkin v. Numm</i> . - - -	XI.	170
70. Costs in equity in the discretion of the Court upon the		

circumstances: not following the event, by a positive rule; as at law; though *prima facie* that is the course; and circumstances must be brought forward by the party who fails. In this instance, a bill by a vendor for a specific performance, the report being against the title, the bill was dismissed with costs, upon the circumstances: the purchaser having taken possession at the instance of the vendor, representing the title to be perfect; though possession taken, generally, is of weight as to costs. *Vancouver v. Bliss.* - - -

XI.

71. Upon a question of title, as to specific performance, farther evidence may be produced on both sides before the Master. - - - - -

XI.

72. Though a party is not permitted to execute a power for his own benefit, and the objection cannot be waved by a party participating in the benefit, as against other interests, the Court will not act against the title upon a mere suspicion that a transaction was of that nature, appearing fair both upon the instrument and the abstract: viz. a purchase under the execution of a power of appointment by a father, subject to estates for life in him and his wife, in favour of their son; all three joining, and receiving the money, the fair value; which is presumed to be received according to their interests in the estate; and the purchaser not bound to see to the application. *M'Queen v. Farquhar.* - - -

XI.

73. Mere suspicion, upon opinions in the abstract, &c. will not support an objection by a purchaser. - - -

XI.

74. A letter to a solicitor, with directions for preparing the conveyance of a purchase, described generally as the land bought of A. not specifying the terms, is not sufficient evidence of a contract within the Statute of Frauds. Therefore the conveyance being subsequent to the will of the purchaser, and no previous contract according to the Statute, giving him an equitable interest, the estate did not pass by his will. *Rose v. Cunnynghame.* - - - - -

XI.

75. Where a written agreement for the purchase of an estate has been executed, the purchaser has the estate in equity; and it will pass by his will; which will not be revoked by the subsequent conveyance of the legal estate. - - - - -

XI.

76. Agreement for the sale of an estate, the result of a correspondence by letters, good within the Statute of Frauds. Effect of admission by answer of letters, stated by the bill, dispensing with the necessity of evidence; and therefore no objection upon the Stamp Acts. The defendant refusing to produce the office-copy of the bill, the draft could not be read: but a special performance was decreed upon inspection of the record. *Huddleston v. Briscoe.* - - - - -

XI.

77. Distinction between an agreement, that may be stamped, paying the penalty, which the party will be permitted to stamp pending the cause, and one upon which no action can be brought, unless stamped. - - - XI. 595
78. Relief in equity upon a bargain and sale, though not enrolled; as an agreement to convey: the obligation arising from the payment of the money. - - - XI. 625
79. Construction of a letter; as not amounting to an absolute agreement to give a marriage portion. Another letter, subsequent to the marriage, authorizing the husband to draw for interest, due on a bond, which was never executed, could not prevail as evidence of a promise; which, if subsequent to the marriage, was void, as *nudum pactum*; and a previous promise not being shewn; if that, by parol, with a written recognition after the marriage, would do within the Statute of Frauds. *Randall v. Morgan*. - - - XII. 67
80. Distinction between the 4th section of the Statute of Frauds, requiring the agreement to be in writing, and signed by the party to be charged, and the 7th section, requiring, that the trust shall be manifested, not that it shall be constituted, by writing. - - - XII. 74
81. Decree upon the answer, admitting a contract, and a letter, offering to sell at a valuation, for a conveyance on payment of the purchase-money into the bank by the plaintiff on a certain day: in default of payment the bill to be dismissed with costs. No binding contract until payment. The estate therefore did not pass by a previous devise; but descended to the heir. *Gaskarth v. Lord Lowther*. - - - XII. 107
82. The time, at which a contract, if to be performed, is not essential in equity, as at law. The relief against the lapse of time is in the discretion of the Court upon the circumstances: as, if the contract is abandoned. *Radcliffe v. Warrington*. - - - XII. 326
83. Contracts, contrary to the policy of the law, as a deed of gift by a client to an attorney, by an heir to a guardian, the purchase of a reversion from a young heir, a trustee selling to himself, set aside without evidence of fraud. - - - XII. 371
84. The doctrine of compensation has been carried too far. It is not to prevail, unless the party will substantially have that, for which he contracted. - - - XIII. 228
85. Time with reference to the performance of a contract, not immaterial. - - - XIII. 228
86. Reference upon the title: an objection to the specific performance, on the ground, that premises, to which no title could be made, were represented as included in the purchase, and were a principal inducement to the purchaser, failing upon the evidence. *Stapylton v. Scott*. - - - XIII. 425

87. Effect of the common mistake of both parties to a contract; and of mistake of one, not occasioned by the other: in the former case avoiding the contract. - XIII. 427
88. To entitle the heir to the performance of an agreement for a purchase out of the personal estate, the agreement must have been binding upon the parties contracting, so that the property was converted in equity before the death. *Buckmaster v. Harrop.* - XIII. 456
89. Sale of land by auction is within the Statute of Frauds. Whether the statute is satisfied by the auctioneer, as the agent of both parties, putting down the biddings, &c. *quære*: that fact not being proved to be contemporary: and the auctioneer being also vendor. - XIII. 456
90. Payment of the auction duty does not satisfy the Statute of Frauds upon the ground of part-performance. - XIII. 456
91. Part-performance by taking possession, cutting the crops, &c. - XIII. 456
92. Whether a legal contract, giving a right of action, can arise out of illegal transactions, as by payments made on account of another in settling differences upon transactions within the Stock-jobbing Act, *quære. Ex parte Daniels.* - XIV. 191
93. Parol agreement not enforced upon the ground of part-performance, when the act is equivocal, and easily admits compensation; as, by a tenant, re-building a party-wall. So, a tenant's possession and cultivation of the land would not sustain a parol agreement to purchase. The act must be unequivocal; and such as of itself to infer some agreement; the terms of which may then be proved by parol. *Frame v. Dawson.* - XIV. 386
94. Agreement for sale according to the valuation of two persons, one chosen by each party, or of an umpire, to be appointed by those two in case of disagreement. Bill for a specific performance; praying, that the Court will appoint a person to make the valuation, or otherwise ascertain it, dismissed. *Milnes v. Gery.* - XIV. 400
95. Agreement to sell at a fair valuation may be executed. - XIV. 407
96. The Court has modified particular, subordinate, parts of an agreement; but the cases of that sort have gone too far: and are not to be extended. - XIV. 407
97. According to the *Roman* and the *English* law, as administered both in Courts of Law and Equity, a fixed price is an essential ingredient in a contract of sale. A contract, therefore, that does not settle the price, is valid and complete only when and if the party, to whom it is referred, shall fix it; and is otherwise totally inoperative. - XIV. 408
98. Compensation for deviations from an agreement, depending on the amount. - XIV. 413
99. Particular, describing a lease, as subject to notice to quit, not inconsistent with a covenant, that the tenant

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shall hold over for a certain time "after the end of the term;" that being upon the context distinguished from the "other sooner determination;" and time, generally, not being of the essence of the contract. *Hall v. Smith.*

XIV. 426

100. Agreement decreed to be delivered up, on the ground, not of fraud; but surprise: neither party understanding the effect of it: viz. a lease, with covenant for perpetual renewal, at a fixed rent, of premises, held under a church lease, renewable upon fines, continually increasing. A single lease for twenty-one years refused: no terms of agreement for such an interest appearing; and under the circumstances permission to try the effect of it at law was refused. *Willan v. Willan.* - - -

XVI. 72

101. Distinction between carrying an agreement into execution and disturbing it, when executed: also as to decreeing it to be delivered up, or leaving the party to make the most of it at law. - - -

XVI. 83

102. Where a Court of Equity, refusing to execute an agreement, leaves the parties to law. - - -

XVI. 86

103. General rule, that a Court of Equity will not assist a person, who has obtained from a person intoxicated, or wishes to get rid of, an agreement, or deed, on the mere ground of intoxication. Exception, where any contrivance was used to draw him into drink; or any unfair advantage made of his situation: or that extreme state of intoxication, depriving a man of his reason; which even at law would invalidate a deed. *Cooke v. Clayworth.* - - -

XVIII. 12

104. Contract for the sale of a subsisting and a reversionary lease not specifically performed without a production of the title of the lessors. The objection not waved by a premature conditional approbation of the title by the purchaser's counsel: but the expense incurred in making out the title, before this objection was taken, repaid. *Deverell v. Lord Bolton.* - - -

XVIII. 505

105. Vendor and vendee proceeding in treaty beyond the time for completing the contract, the vendor having brought an Action, and withdrawn his Record, not having got in a judgment, amounting to half the purchase-money, refused an Injunction. *Wood v. Bernal.*

XIX. 220

106. Time, as of the essence of the contract, waved by a protracted treaty. - - -

XIX. 220

107. Purchaser not to be compelled to take an indemnity against a Judgment, amounting to half of the purchase-money. Distinction of a small incumbrance on a considerable estate. - - -

XIX. 221

108. The price is of the essence of a contract of sale: if, therefore, to be fixed by arbitrators, and they do not fix it, there is no contract: but the Court, determining that an agreement ought to be executed, does not require foreign aid to carry the details into execution. -

XIX. 431



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|---|--------|
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| 109. Whether payment of part of purchase-money is part-performance of a parol agreement, taking it out of the Statute of Frauds, <i>quære</i> . - - - - -   | XIX.   |
| 110. Act of part-performance, avoiding the Statute of Frauds, as repairs, &c. must be in its nature almost necessarily done in pursuance of the contract alleged. - - -   | XIX.   |
| 111. Distinction between payment of the whole money, and of part only as an act of part-performance, avoiding the Statute of Frauds, if it can apply to a contract of purchase, cannot to a mortgage. Whether payment of the whole would be sufficient in the former case, <i>quære</i> . - | XIX.   |
| 112. Right to stop <i>in transitu</i> , determining the contract before possession of vendee. - - - - -   | XIX.   |
| 113. The relief by delivering up a contract requires a stronger case than to resist a specific performance. <i>Savage v. Brocksope</i> . - - - - -  | XVIII. |

#### ILLEGAL.—SPECIFIC PERFORMANCE.

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|--|------|
| ILLEGAL.—1. Bill indorsed in consideration of effecting illegal insurance not proveable in bankruptcy.   |      |
| 2. For smuggled goods not enforced for the agent, who paid for them against him, who ordered and received them.  |      |
| 3. For the continuation of stock, as a loan, held a sale.  |      |
| 4. For joint concern in ship insurances void by the statute 6 Geo. 1 ; though in separate names.   |      |
| 5. Mutual insurance not within the statute 6 Geo. 1.   |      |
| 6. Party cannot set up his illegal act as to avoid his deed.   |      |
| 7. In smuggling or stock transactions not executed.  |      |
| 8. For sale of command of <i>East India</i> Ship not enforced.   |      |
| 9. For smuggled goods or illegal insurance, no recovery.   |      |
| 10. Between father and son, to take orders, and accept a Living.   |      |
| 11. Result of combination ; though not strictly forestalling.  |      |
| 12. Insurances within the stat. 6 Geo. 1, not allowed in account.  |      |
| 13. Rule, " <i>In pari delicto melior est conditio possidentis</i> ," not universal.   |      |
| 14. Payment for illegal purpose may be recovered.  |      |
| 1. Bill indorsed to a broker in consideration of money paid by him in effecting insurances ; one of which was illegal : the acceptor becoming bankrupt, the petition of the indorsee to prove was dismissed as to what arose upon the illegal insurance ; and, the bankruptcy being some years ago, an inquiry was directed as to the rest. <i>Ex parte Mather</i> . - - - - - | III. |
| 2. <i>A.</i> employed by <i>B.</i> to buy smuggled goods, pays for them ; and they come to the hands of <i>B.</i> : <i>B.</i> shall not pay for them. - - - - -  | III. |



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3. Stock transferred as a security for a floating balance, and under an agreement to continue it transferred and re-transferred by the creditor by way of loan: held a sale. *Ex parte Denison.* - - - - - III. 552
4. Contract to be jointly concerned in ship-insurances is void by the statute 6 Geo. 1. c. 18. s. 12, though the policies are subscribed by the under-writers in their separate names: but though the contract could not be executed, the Court would not exclude the result of it in decreeing a general account (a). *Watts v. Brooks.* - - - III. 612
5. Insuring each other is not within the statute 6 Geo. 1. c. 18. s. 12. - - - - - III. 613
6. A man cannot set up his own illegal act to avoid his own deed. - - - - - III. 613
7. Smuggling transactions or illegal dealings in stock shall be brought into an account: though the Court would not execute the contract (b). - - - - - III. 613
8. A contract for sale of the command of an *East India* ship is illegal; and therefore cannot be enforced by suit upon the equity against the fund paid by the Company as a compensation, under the regulation of 1796, to restrain the practice in future. *Thompson v. Thompson.* VII. 470
9. Upon a contract for smuggled goods, though they are received, the money cannot be recovered. So upon an illegal insurance contrary to the Act of Parliament, though the money was received by the broker, it cannot be recovered. - - - - - VII. 473
10. Bond by a father to secure an annuity to his son, until he should be in possession of a Living of a certain value; and an agreement of the same date, reciting the bond, declaring, that the son would forthwith enter into Holy Orders, and accept such Living. The *Lord Chancellor* expressed a strong opinion, that upon grounds of public policy by the effect of the agreement the transaction was illegal: but the decision was upon the ground, that the son had not complied with the condition; having received the annuity nine years, and being still only in Deacon's Orders, that the annuity was determinable by his father or his representatives. *Lord Kircudbright v. Lady Kircudbright.* - - - - - VIII. 51
11. Demurrer allowed to a bill for a discovery, and Injunction against an Action; the effect being a contract for participation in an illegal transaction: the result of a combination of wholesale grocers, by the title of "The *Fruit Club*," acting by a select committee, of which the defendants were members, to purchase all imported fruit; though not strictly forestalling, regrating, or monopoly. *Cousins v. Smith.* - - - - - XIII. 542

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(a) The latter decision was over-ruled, see the note, Vol. III. page 613.

(b) Over-ruled, see the note.

12. Insurances, illegal, within the act 6 Geo. 1. c. 18. s. 12, not allowed in an account before the Master. - - - XII
13. The rule "*In pari delicto melior est conditio possidentis*," preventing suit, is not universal; admitting degrees of guilt by concurring in the same criminal act. Therefore against a private agreement, obtained by a father from his son, in derogation of an allowed sale of the command of a post-office Packet by the former to the latter, an account was decreed. *Osborne v. Williams*. - XVII
14. Lord *Thurlow*'s opinion, that in all cases money paid for an illegal purpose may be recovered. - - - XVII

- SPECIFIC PERFORMANCE.**—1. Discretionary: purchaser not compelled to take a doubtful title.
2. Of articles for a lease; though plaintiff had contracted to under-let contrary to them.
3. Of agreement to build, if certain.
4. Refused for laches.
5. Though a small incumbrance, admitting compensation.
6. } Discretionary: price by arbitra-
7. } tion.
8. Refused on grounds of public policy; though plaintiff not implicated.
9. Refused, not enforced, on parol evidence of mistake, &c.
10. Though defendant had not executed.
11. With written, not parol, variation.
12. Where time not material; no unreasonable delay; and a title at the hearing.
13. Distinction between parol evidence for and against it.
14. Under circumstances, and time not the essence.
15. Not of covenant to make good a gravel-pit.
16. Principle, defect of legal remedy.
17. Though considerable difference in value.
18. Though inadequacy; unless decisive of fraud.
19. Of course, when parties competent, &c.
20. Discretionary.
21. Not, if surprise.
22. If title before Report.
23. Though a variance; with compensation.
24. With compensation for a small part.

- CIFIC PERFORMANCE—**
- 25. Not upon letters; unless agreement on fair interpretation concluded.
  - 26. Whether on signature by one, and nothing done.
  - 27. Discretionary: refused on mistake without fraud.
  - 28. Not to transfer stock.
  - 29. Compensation and indemnity distinguished from substantial deviation.
  - 30. Origin and progress of the jurisdiction.
  - 31. Compensation and indemnity distinguished from substantial deviation.
  - 32. Refused on mistake.
  - 33. Refused on lapse of time.
  - 34. } Origin of the jurisdiction.
  - 35. }
  - 36. Though a lapse of time; if not essential.
  - 37. Principle, that the contract may be performed in substance.
  - 38. Not, if purchaser cannot have what was his strong inducement.
  - 39. } For defendant on answer; and
  - 40. } cross-bill unnecessary.
  - 41. Want of interest no objection in an early stage.
  - 42. Refused on parol evidence of an alteration. Distinction between plaintiff and defendant.
  - 43. } Parol evidence of auctioneer to
  - 44. } explain the particular refused
  - 45. } in aid of performance: distinction, when to resist it.
  - 46. On defendant's construction without a cross-bill.
  - 47. Without reference of title on possession and no objection to abstract.
  - 48. With compensation or indemnity for defect.
  - 49. Proof according to the description required.
  - 50. Plea, that plaintiff had taken the benefit of an Insolvent Act, over-ruled.
  - 51. } Price to be fixed by arbitrators not extended to representatives.
  - 52. } Distinction, where the terms are to be ascertained by award:
  - 53. } Not where the arbitration has failed.

**SPECIFIC PERFORMANCE—53.** No right, generally, to damages for non-performance by issue or reference. Distinction as to compensation.

**54.** Prevented between trustee and *cestui que trust* by the interest of a third party; though the effect may be a benefit to the trustee.

**55.** Effect of parol waiver or variation of written contract.

**56.** Relief adapted to justice against trustees for infants on mistake, without fraud, &c. upon the rule for abatement on deficiency.

**57.** Not on misrepresentation, though slight. Distinction as to rescinding the contract.

**58.** Discretion not arbitrary.

**59.** On part-performance.

**60.** Lapse of time trifling; and the result of fraud.

**61.** Under power of sale in mortgage deed without the mortgagor.

**62.** Not on admission by answer.

**63.** Master substituted for the person to settle the terms; if not essential.

**64.** Not of agreement for arbitration. Case of the *Opera-house*, &c.

**65.** Not on improper valuation of arbitrator.

**66.** Refused on evidence of variation.

**1.** Discretion in the Court to decree specific performance of an agreement for a purchase, or to leave it to law; therefore a purchaser will not be compelled to take a doubtful title. *Cooper v. Denne*. - - - - -

I.

**2.** Specific performance of articles to grant a lease to the plaintiff decreed; though he had contracted to underlet contrary to those articles. *Williams v. Cheney*. -

III.

**3.** Specific performance of an agreement to build may be decreed, if sufficiently certain: but a general covenant to lay out a certain sum in a building of a certain value cannot be so executed. *Mosely v. Virgin*. - -

III.

**4.** Specific performance refused on account of the laches of the plaintiff, the vendor. *Guest v. Homfray*. - -

V.

**5.** A small incumbrance, which may be the subject of compensation, no objection to a specific performance. -

V.

**6.** Though a person may agree to sell at a price to be fixed by arbitration, and the award can be impeached only upon the grounds affecting all awards, as fraud or gross mistake, yet upon such an agreement, where some of

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the parties to be bound were married women, of whom also one had not executed, the Court refused a specific performance; and dismissed the bill; leaving the plaintiff to law. Upon appeal the decree affirmed; on the ground, that the evidence did not prove satisfactorily, as it ought especially in the case of married women, that the valuation was made with due attention and care. *Emery v. Wase.* - - - - - V. 846.

VIII. 505

7. Specific performance not of right, but in the discretion of the Court. *Omerod v. Hardman.* - - - - -

V. 734

8. Bill for specific performance of an agreement, originating in communication by the Commissioners, who took the depositions in a cause, and by the witnesses, to the defendant as to the nature and effect of the evidence. Though the plaintiff was not implicated in the transaction, the bill was dismissed on grounds of public policy. *Cooth v. Jackson.* - - - - -

VI. 12

9. Parol evidence admissible in opposition to a specific performance of a written agreement upon the heads of mistake or surprise as well as of fraud; and upon such evidence the bill was dismissed. Another bill for a specific performance of the agreement, corrected according to the same evidence, contradicted by the Answer, was also dismissed. *The Marquis of Townshend v. Stangroom.* - - - - -

VI. 328

10. Decree for specific performance of an agreement to grant a lease, of which only one part, signed by the plaintiff, was found in the possession of the defendant, upon the circumstances; possession, drafts prepared and approved, and the execution deferred only till repairs completed. An extension of the term according to a variation of the agreement, also in writing, was refused on the ground of want of consideration. *Robson v. Collins.* - - - - -

VII. 180

11. Specific performance of a written agreement with a variation by writing; not with a variation by parol. - - - - -

VII. 133

12. Where the time, at which the contract was to be executed, is not material, and there is no unreasonable delay, the vendor, though not having a good title at the time the contract was to be executed, nor when the bill was filed, but being able to make a title at the hearing, is entitled to a specific performance. *Wynne Morgan.* - - - - -

VII. 202

13. Though a defendant, resisting a specific performance, may go into parol evidence, that by fraud the written agreement does not express the real terms, a plaintiff cannot for the purpose of obtaining a specific performance with a variation. *Woollam v. Hearn.* - - - - -

VII. 211

14. Specific performance decreed: the abstract, though delivered very late, and under a notice, that the vendee would insist on his deposit with interest, if the title should not be made out, and possession delivered by

the time of payment, having been received and kept without objection; and the vendee upon the construction and the circumstances not being entitled to insist on the time, as the essence of the contract. <i>Seton v. Slade</i> . . . . .	Vol.
15. Specific performance of a covenant to make good a gravel-pit refused. <i>Flint v. Brandon</i> . . . . .	VII.
16. Principle of specific performance, that the legal remedy is inadequate or defective. . . . .	VIII.
17. Mere difference in value, though considerable, not of itself a sufficient ground for refusing a specific performance. . . . .	VIII.
18. Inadequacy of price, unless amounting in itself to conclusive and decisive evidence of fraud, is not itself a sufficient ground for refusing a specific performance. . . . .	IX.
19. Specific performance of a contract by a competent party, and its nature and circumstances unobjectionable, as much of course as damages at law. . . . .	IX.
20. The Court is not bound to decree a specific performance in every case, where it will not set aside the contract; nor to set aside every contract, that it will not specifically perform. Under circumstances, that would have amounted to a breach of trust, inadequacy of consideration, arising from gross negligence of the agent, and a want of due authority, the bill was dismissed; though the plaintiff was unimpeached; without prejudice to his remedy at law. <i>Mortlock v. Buller</i> . . . . .	IX.
21. No specific performance, if any surprise, making it not fair and honest to call for it: the plaintiff left to law. . . . .	X.
22. Vendor, not having a title at the date of the contract, shall have a specific performance, if he procures a title before the Report. . . . .	X.
23. Specific performance of an agreement for the sale of an estate decreed, notwithstanding a variance from the description; with compensation for the deficiency in value; though a minute examination might have discovered the defects; as in the state of the house and the cultivation of the lands: not for a variance from the description, as lying within a ring-fence; being an object of sense; and upon the evidence the purchaser being apprised of it. The premises consisting of a leasehold farm, and three years having expired pending the suit, interest was given to the vendor; and a rent set upon it in respect of his possession. <i>Dyer v. Hargrave</i> . . . . .	X.
24. The objection by a purchaser applying only to a small part of the estate, a specific performance decreed with compensation. <i>M'Queen v. Farquhar</i> . . . . .	XI.
25. No specific performance of an agreement by letters; unless upon a fair interpretation concluded; if doubtful, whether more than treaty, to be left to law. . . . .	XI.
26. Whether the Court will perform a contract, signed by	

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- one party, not by the other, and nothing done upon it,  
*quære.* - - - - - XI. 592
27. Specific performance of an agreement the subject of discretion: refused therefore, in the case of mistake; though no fraud. *Mason v. Armitage.* - - - XIII. 25
28. No specific performance of an agreement to transfer stock. XIII. 37
29. Specific performance upon the principle of compensation and indemnity: not, if the defect is a substantial deviation from the contract. *Halsey v. Grant.* - - - XIII. 73
30. Origin and progress of the equitable jurisdiction to enforce the specific performance of agreements. - - - XIII. 76
31. Specific performance upon the principle of compensation and indemnity: the defect not being a substantial deviation from the contract. *Horniblow v. Shirley.* - XIII. 81
32. Specific performance refused upon mistake. - - - XIII. 135
33. Bill for specific performance of an agreement dismissed upon the lapse of time without proceeding in the performance. *Alley v. Deschamps.* - - - XIII. 225
- 34.) Origin of the jurisdiction to grant the specific perform-  
35.) ance of an agreement. - - - - - XIII. 228
36. Lapse of time, if not an essential object of the contract, is no objection to a specific performance. Injunction upon that, combined, with other circumstances. *Hearne v. Tenant.* - - - - - XIII. 287
37. Principle of specific performance, that the contract may be performed in substance; though the terms are not strictly complied with: so as to give the right at law. - XIII. 289
38. If a purchaser cannot have what was his strong inducement to the contract, a specific performance with compensation not to be enforced. - - - - - XIII. 426
39. Defendant to a bill for specific performance, proving an agreement, different from that insisted on by the plaintiff, may have a decree upon his Answer submitting to perform. A cross bill therefore, though formerly the course, being unnecessary, would be dismissed with costs. *Fife v. Clayton.* - - - - - XIII. 546
40. Cross bill for specific performance according to the Answer dismissed, with costs, as unnecessary. *Stapylton v. Scott.* - - - - - XIII. 425
41. Objection to the execution of an agreement for want of interest cannot prevail in an early stage of the suit; as the interest may be acquired. - - - - - XIV. 412
42. Specific performance of an agreement in writing for a lease for sixty years refused upon parol evidence of an alteration, stipulated for at the same time; and upon the faith of which the party executed. Distinction between the case of a defendant refusing, and a plaintiff seeking, the execution of an agreement under such circumstances. *Clarke v. Grant.* - - - - - XIV. 519
43. Parol evidence, in aid of a specific performance upon the



sale of an estate by auction, to explain by declarations of the auctioneer an ambiguity on the face of the particular, by a general clause for a separate valuation of the timber, and also special provisions as to the timber upon certain lots, the agreement, signed on the back of the particular, binding the purchaser, defendant, " to a strict fulfilment of this article, and to abide " by the conditions and declarations made at the sale," rejected. *Higginson v. Clowes.* - - - - -

XV.

XV.

XV.

XV.

XVI.

XVI.

XVI.

XVII.

44. Distinction, where evidence is to resist a specific performance. - - - - -

45. Though a defendant to a bill for specific performance of a contract, may have a decree for performance according to his construction, if adopted by the Court, without a cross-bill, the decision being, not according to his construction, but only that he had contracted under a mistake, created by the plaintiff, the bill was merely dismissed. - - - - -

46. Specific performance decreed against a purchaser, without a reference as to the title ; upon possession, and no objection made to the abstract. *Fleetwood v. Green.* - - - - -

47. Specific performance decreed, upon the bill of the purchaser, with compensation for a defect of title, if to be ascertained, by reduction of the purchase-money : if not, or the plaintiff would so take it, with an indemnity : the defendant, the vendor, proposing an option to take it, as it was, or relinquish the contract : the defect consisting in the representation by the Particular of a Church-lease for twenty-one years, with covenants for renewals to sixty-three years : the lease being actually for lives ; and the covenants limited and contingent. *Milligan v. Coake.* - - - - -

48. To obtain a specific performance of a contract the subject must be proved, as described. *Daniels v. Davison.* - - - - -

49. Plea to a bill for specific performance of an agreement for a lease to the plaintiff, and an Injunction against an ejectment, &c. that the plaintiff had since the bill filed taken the benefit of an Insolvent Act, over-ruled. *De Minckwitz v. Udney.* - - - - -

50. Specific performance refused under a contract for sale at a price, to be fixed by arbitrators within a certain time, or if they should not agree to make their award within the time, by an umpire, also within a limited time : the construction of the contract, requiring the delivery of the award in writing to each party being, that, though the consequential acts, executing the conveyances, &c. might be done by representatives, it was, with reference to the terms to be fixed by the award, personal to the parties ; one of whom died before it. *Blundell v. Brettargh.* - - - - -

51. If the terms of an agreement are to be ascertained by an

award, being so ascertained, it shall be specifically performed, if any thing is to be done *in specie*: conveyances, &c.: not, if the acts done towards executing it by an award, are not valid at law, as to the time, manner, or other circumstances; unless there has been acquiescence, notwithstanding the variation of circumstances, or part-performance. - - - - -

XVII. 241

52. No instance, where the medium of arbitration for settling the terms of a contract having failed, this Court has assumed jurisdiction to determine, that there is a contract, though not at law, in equity; which, though the parties never agree to it, shall be specifically executed. - - - - -

XVII. 243

53. Plaintiff in a bill for specific performance of a contract, is not entitled, generally, to satisfaction by way of damages for the non-performance, to be ascertained by an issue, or a reference to the Master. Distinction as to the case of compensation: as for a part subject to tithes, though represented as tithe-free; giving the purchaser, if he chooses to take the purchase, a right to compensation, but not to compel the vendor to purchase the tithes. *Todd v. Gee*. - - - - -

XVII. 273

54. The interest, which a third party may have against the specific performance of a contract, may preclude the execution of it, as between trustee and *cestui que trust*; as, where an insolvent tenant made over his lease to another, who treated for a renewal under a secret agreement in trust for the original tenant. That agreement not executed against the landlord; and the principle, that a trustee shall derive no benefit from his trust, should fail, rather than be executed against a third party, so imposed upon; though, except for that interest, it would have been executed as between the other parties. - - - - -

XVII. 313

55. Though a parol waiver of a written contract, amounting to a complete abandonment, and clearly proved, would bar a specific performance, or even parol variations, so acted upon, that the original agreement could no longer be enforced without injury to one party; variations, verbally agreed upon, are not sufficient to prevent the execution of a written agreement: the situation of the parties in all other respects remaining the same. In this case the variations were all for the advantage of the defendant by gratuitous covenants of the plaintiff. *Price v. Dyer*. - - - - -

XVII. 366

56. General rule of specific performance, that the purchaser shall have what the vendor can give, with an abatement out of the purchase-money for so much as the quantity falls short of the representation. Enforced against trustees for infants upon the mere mistake of their agent, without fraud, &c.: but the relief adapted to the jus-

tice of the case : viz. the purchase being of wood upon a gross valuation, without regard to the quantity of land, an abatement for a deficiency of quantity, from erroneously inserting the hedges and fences not included in the purchase, was directed with reference to land merely, not wood-land. *Hill v. Buckley.* - - - -

XVII.

57. Misrepresentation, though in a slight degree, is an objection to a specific performance. Distinction upon a bill to rescind the contract. *Cadman v. Horner.* - -

XVIII.

58. Equitable discretion to lend, or refuse, aid to execute a contract for purchase not arbitrary. - - - -

XVIII.

59. Agreement for a lease, in part-performed by possession taken, though without express assent, acquiesced in, and expenditure permitted : specific performance according to the plaintiff's evidence against the assertion of a right of resumption by the Answer and one witness ; not proving, that it was admitted. *Gregory v. Mighell.* - - - -

XVIII.

60. Specific performance ; the lapse of time being trifling, and the result of fraud. *Savage v. Brocksopp.* -

XVIII.

61. Specific performance against a purchaser under a power of sale in a mortgage-deed without the mortgagor, though under a covenant to the mortgagee to join in a sale, without costs ; the only authority produced not being in print. *Corder v. Morgan.* - - - -

XVIII.

62. The Court, of late, against specific performance on admission of a contract by the Answer. - - - -

XIX.

63. Decree for specific performance of an agreement to grant a lease ; rejecting one term, for such conditions, &c. as shall be judged proper by *J. G.* ; and substituting a reference to the Master ; the agency of *J. G.* not being of the essence of the contract. *Gourlay v. The Duke of Somerset.* - - - -

XIX.

64. No specific performance of an agreement to refer to arbitration. Under particular circumstances, as in the case of the *Opera House*, and a brewery, where there were many partners, the parties were left to the remedy they had chalked out for themselves ; the Court refusing all interposition ; not acting through the agency of the arbitrators, appointing them to take the accounts, and adopting their decision as the decree. - - - -

XIX.

65. Execution of a contract refused ; the valuation of an arbitrator, who settled the price, not being properly and discreetly made. - - - -

XIX

66. Bill for specific performance of an agreement dismissed : the agreement appearing from letters produced to have been different from that set up by the bill and proved by one witness. *Legh v. Haverfield.* - - - -

V

See Accident 1. Arbitration 24. 27. Auction 4. 5. Bankrupt 8. Baron and Feme 46. 54. 55. 94. Colony 1. Confirmation. Consideration 5. Copyright 7. Corpo-

*ration* 9. *Covenant*. *Creditor* 3. *Creditor and Debtor* 6. *Deed* 1. *Demurrer* 1. *Devise* 16. 20. 21. *Dower* 6. *Election* 28. *Evidence* 4. (*Parol* 1. 2.) *Fraud* 4. 18. 28. *Frauds (Statute of)* 1. 3. 6. 12. 13. 14. *Infant* 8. *Interest* 18. 19. 42. 43. *Laches* 15. *Landlord and Tenant* 20. 33. 34. 55. 56. *Lease*. *Lunacy* 37. 38. *Marriage* 11. *Mistake* 3. *Partition* 4. *Partner* 20. *Party* 2. *Pleading* 11. (*Answer* 11.) *Practice* 143. 174. *Principal and Agent* 17. 18. 32. *Priority* 1. *Purchase* 15. 16. 28. *Registry (Ship* 1.) *Repair*. *Representation* 15. *Reversion* 1. *Revocation* 16. 21. *Stock* 2. 9. *Tenant* 2. *Title* 1. *Usury* 6. *Vendor and Vendee*. *Voluntary Settlement, &c.* *Waver* 1. *West Indies* 1. *Will* 9. (*Revocation* 24.)

### CONTRIBUTION.

CONTRIBUTION.—1. Not to an incumbrance in respect of a sale, especially under a Decree, by tenant in tail, for remainder-man, who might have been barred.

1. No contribution to an incumbrance in respect of an estate, sold by a prior tenant in tail, in favour of a remainder-man; who might have been barred: especially if the sale was under a decree. *Lloyd v. Johnes*. -

IX. 37

See *Annuity*. *Bankrupt (Partner* 6.) *Jurisdiction* 7. 22. *Land Tax* 1. *Principal and Surety* 18.

### CONVERSION.

See *Trover*.

### CONVERSION OF ASSETS.

See *Assets* 35. 36. 37. 38.

### CONVERSION OF ESTATE.

See *Equitable Interest* 1. 2. *Estate*. *Trust (Resulting* 7.)

### CONVEYANCE, DEFECTIVE.

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### CONVEYANCE, VOLUNTARY.

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### CONVICT.

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### COPY OF BOOKS OF THE BANK OF ENGLAND.

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### COPYHOLD.

1. No escheat to the Crown.
2. Estate of the lord prevents forfeiture.

- 3. Equitable bar of free-bench.
- 4. Whether *Mandamus* to admit.
- 5. Commission to distinguish, and ascertain boundaries.
- 6. Mortgagee may rebuild to prevent forfeiture.
- 7. Mortgagee's surrender to the use of his will no proof that he considered it irredeemable.
- 8. Surrender to the use of mortgagee without admission does not dispense with surrender to the use of the will.
- 9. Passes by the surrender, not the will.
- 10. } Not assets.
- 11. }
- 12. Lord's estate preserves remainders.
- 13. Admittance of particular tenant includes remainders.
- 14. Admittance enures according to the title, though incorrectly expressed.
- 15. Devise by general words.
- 16. Stat. 9 Geo. 1. for admission of infants, &c. does not apply to a title under a deed.
- 17. } Apportionment of fine. Effect of remission as to the
- 18. } remainders.
- 19. Admission of tenant for life includes the remainders. Assessment of fine.
- 20. Writ of *accedas ad curiam* superseded.
- 21. Devised by description of copyhold ground-rent.

- 1. Copyhold cannot escheat to the Crown. *Walker v. Denne.* II.
- 2. Contingent remainders of copyhold will be preserved against a forfeiture by the estate of the Lord: not where the preceding estates are expired. - - - - - II.
- 3. Copyholder having power to bar the widow's free-bench by surrender, any act by him for valuable consideration will bar her in equity. *Brown v. Raindle.* - - - III.
- 4. Whether *Mandamus* to the Lord to admit to copyhold lies, *quære.* - - - - - III.
- 5. Upon the bill of the Lord a Commission issued to distinguish copyhold lands within the manor, comprised in admittances produced, the last in 1693, from freehold, and compounded from uncompounded copyholds, and to ascertain the boundaries; and, if they cannot be distinguished, to set out lands of the tenant of equal value with so much of the copyhold lands as cannot be distinguished. *The Duke of Leeds v. The Earl of Strafford.* - - - - - IV.
- 6. Mortgagee of a copyhold may pull down ruinous houses and build better to prevent a forfeiture. - - - IV.
- 7. Surrender by mortgagee of copyhold to the use of his will is no proof, that he considered it irredeemable. - IV.
- 8. Copyhold estates surrendered to the use of mortgagees: but they had not been admitted. The mortgagor devising them must surrender to the use of his will. *Kenobel v. Scrafton.* - - - - - VIII.

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9. Copyhold estates pass by the surrender, not by the will; which operates as a declaration of uses. - - -	VIII.	286
10. Copyhold estates not liable to debts farther than subjected. - - - - -	VIII.	393
11. Copyhold estates not assets for specialty debts, not even debts to the Crown. - - - - -	VIII.	394
12. The estate of the Lord will preserve contingent remainders of copyhold estate. - - - - -	X.	282
13. Admittance of the particular tenant of copyhold is an admittance of the remainder-man. A devise of the remainder or reversion therefore requires a surrender to the use of the Will. <i>Church v. Mundy.</i> - - -	XII.	426
14. Admittance to a copyhold enures according to the title; though not correctly expressed. - - - - -	XII.	426
15. Devise of the trust of copyhold by general words. -	XIII.	174
16. The statute 9 Geo. 1. c. 29, providing for the admission of copyholders, infants, or <i>femes covert</i> , is confined to the cases expressed; viz. title by descent or surrender to the use of a Will; and does not apply to a title under a deed. Therefore, to a Bill by the Lord, stating a title in remainder by deed of appointment under a settlement, and an admission by the tenant for life, without fine, having paid a fine upon a former admission under his original title, and upon his death, praying a discovery and production of the deed, in aid of an action under the Statute, a Demurrer was allowed. <i>Lord Kensington v. Mansell.</i> - - -	XIII.	240
17. The Lord, admitting a tenant for life, may apportion the fine; but cannot remit it to the tenant for life, and charge the whole upon the remainders. - - -	XIII.	246
18. The Lord, remitting the fine upon the admission of tenant for life, does not discharge the remainders. -	XIII.	252
19. Admission of tenant for life to a copyhold is the admission of all in remainder; and the Lord may assess the whole fine. In case of separate assessments, as to the fine, when the fine is due in respect of the remainder, <i>quære.</i> - - - - -	XIII.	253
20. Writ of <i>accedas ad curiam</i> , to remove a real action for copyhold estate from the Lord's Court to the Common Pleas, superseded. <i>Scott v. Kettlewell.</i> - - -	XIX.	335
21. Devise of copyhold estate by the description of copyhold ground-rent. <i>Walker v. Shore.</i> - - - - -	XIX.	387

ELECTION.—MERGER.—MINE.—NOTICE.—SURRENDER.—  
TIMBER.—WASTE.

ELECTION.—1. }  
2. } Applied to the customary heir.  
3. }

1. The point, that the doctrine of Election reaches the customary heir, claiming a copyhold estate for want of a surrender, admitted at the bar. <i>Blunt v. Clitherow.</i> -	X.	589
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2. Devise of all freehold and copyhold estates. The copyholds were surrendered to the use of the Will: but the testatrix afterwards exchanged part for other copyholds; which were not surrendered: the heir, claiming beneficially under the Will, was put to Election. *Frank v. Lady Standish.* - - - - - XV. 3
3. The doctrine of Election applied to copyhold estate, not surrendered to the use of the Will. - - - - - XV

**MERGER.**—1. Enfranchisement by conveyance in fee from the Lord to tenant for life.

2. Purchase of copyhold by the Lord, tenant for life of the manor, with remainders over, taking the surrender to him and his heirs.

1. Tenant for life of a copyhold, remainder to his first and other sons in tail, took a conveyance in fee from the Lord. The premises descended upon his eldest son; who by Will charged all his real estate with debts and legacies, and devised it to his brother for life with various remainders: the estates in the copyhold are barred. *Challoner v. Murhall.* - - - - - II
2. Copyhold premises, purchased by the Lord, tenant for life of the manor, with remainders over, taking the surrender to him and his heirs, merge; and, as parcel, are subject to the limitations of the manor; and though under a covenant by the purchaser to surrender them by way of mortgage to the mortgagee and his heirs he could compel a re-grant by the remainder-man, no re-grant having been made, the general devisees of the purchaser have no equity. *St. Paul v. Viscount Dudley and Ward.* - - - - - XV.

**MINE.**—1. } Lord restrained from opening. Distinction as to  
2. } one opened.

1. Injunction by a copyholder: restraining the Lord preparing to open a mine. Distinction as to a mine opened, and working. *Grey v. The Duke of Northumberland.* XIII.
2. Though the property in mines, or trees, may be in the Lord of a manor, it does not follow, that he can enter, and take it, without consent of the tenant. - - - XVII.

**NOTICE.**—1. From court-rolls, whether presumed against purchaser.

1. Whether purchaser of copyhold must be presumed to have notice of every thing on the court-rolls, *quære.* - XVIII.

**SURRENDER.**—1. Supplied after the Statute of Charitable Uses.  
2. Supplied for widow against co-heiresses, daughters, &c. The object only regarded.  
3. Supplied on legal or moral obligation.  
4. Not supplied for grand-children.



## SURRENDER. — 5.

6. } Supplied for child or creditors, or wife.  
7. }  
8. }

9. Not supplied for nephews, &c.

10. Distinction in supplying it from general words between creditors and children.

11. General right of surrender to use of the will. Supplied for creditors, &c.

12. } Supplied for widow, without regard to her pro-  
13. } vision. As to the provision for the heir.  
14. }

15. To the use of the will not defeated by one subsequent without admittance.

16. Distinction as to supplying it between lineal and collateral heir. Not for child against grand-child unprovided.

17. Supplied in case of a deed.

- |   |          |
|---|----------|
| 1. The idea of supplying a surrender began after the Statute of Charitable Uses. - - - - -  | III. 69  |
| 2. The want of a surrender of copyhold estate to the use of the will supplied in favour of a widow against co-heiresses, daughters of the devisor, married, and infant grand-daughters by deceased daughters. The <i>Lord Chancellor</i> was of opinion, that in supplying a surrender the Court is to look only to the object, not to the circumstances of the parties; as, whether the heir has a provision or not. <i>Hills v. Downton</i> . - - - - -           | V. 557   |
| 3. The ground of supplying the want of a surrender of copyhold estate is a legal or moral obligation. - - - - -   | V. 563   |
| 4. The want of a surrender of copyhold estate cannot be supplied for grand-children. <i>Perry v. Whitehead</i> . - - - - -  | VI. 551  |
| 5. Devise of all copyhold estates, in general terms, unrestrained, to a child passes all copyholds surrendered, and not surrendered to the use of the will. <i>Blunt v. Clitherow</i> . - - - - -   | X. 589   |
| 6. Devise by general words, viz. messuages, lands, tenements, and hereditaments, for payment of debts, will include copyholds, if required; and the want of a surrender will be supplied. In this instance the intention to subject the copyhold estate appeared in other parts of the will. <i>Williams v. Coussmaker</i> . - - - - -  | XII. 136 |
| 7. Want of surrender supplied, if copyhold estate is devised for debts. - - - - -   | XII. 216 |
| 8. Copyholds not intended to be comprehended in devise to the wife, in general terms, "real and personal estates;" so as to entitle her to have the surrender supplied. Upon appeal, the <i>Lord Chancellor's</i> opinion being, that the reversion of the copyhold estate passed under the general devise, "as to all such worldly estate and effects " as it may please God to bless me withall, or I may " leave, or I may be entitled to, at the time of my de- |          |

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“ cease, whether real or personal, not before given or “ disposed of,” especially if there was no freehold estate, inquiries were directed to ascertain that fact; and also, whether there was any custom of surrendering a vested interest in reversion or remainder expectant upon an estate tail. *Church v. Mundy.* - - XII. 426. XV.

9. Devise by the general terms, “ all the rest, residue, and “ remainder of my real and personal estate, of what nature,” &c. soever, to nephews and nieces, not being for creditors, wife, or children, is not sufficient to raise a case of election, or for supplying the want of surrender of copyhold land contiguous and intermixed with the freehold, against the heir. *Judd v. Pratt.* XIII. 168. XV.

10. Distinction, as to supplying a surrender by implication from general words, between the cases of creditors and children: in the latter, the intention is satisfied by freehold estate: the extent of the provision being indefinite; which in the other is measured by the amount of the debts. - - - - - XV.

11. Copyholder's right of surrender to the use of his will, though no instance upon the records of the manor: or, if no such custom, there must be some mode of disposition by deed; as in the case of customary freeholds; the want of which (in the case of creditors, &c.) will be supplied. - - - - - XV.

12. The want of surrender supplied for a widow against a collateral heir, viz. a sister: whether provided for, or not. As to a son, *quære.* *Fielding v. Winwood.* - XVI.

13. In supplying the want of surrender for a widow it is immaterial, how ample or scanty her provision may be. - XVI.

14. Surrender supplied for younger children, the heir having a provision under the will, without regard to the amount. *Garn v. Garn.* - - - - - XVI.

15. Devise of copyhold supported by an existing surrender to the use of a will, notwithstanding an intermediate surrender to other uses; under which there had never been any admittance. - - - - - XVI.

16. Distinction as to supplying the want of a surrender between a lineal and collateral heir. Not supplied for a child against a grandchild, unprovided for. The answer stating only, that the heir inherited no other land, an inquiry was directed, whether he has a provision; and as to the nature and extent of it. *Rodgers v. Marshall.* XVII.

17. The want of surrender supplied in the case of a deed, as well as a will; but upon the same principle as in the case of a will, or the execution of a power; *i. e.* for and against the same persons. - - - - - XVII.

- TIMBER.—1. }  
2. } Whether it can belong to the tenant by custom.  
3. } Rights of Lord and Tenant under, independent  
4. } of, or restrained by, the custom.  
5. }

## COPYHOLD.—COPYRIGHT.

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- |   |          |
|---|----------|
| 1. <i>Quære</i> , whether by the custom of a manor the timber can belong to the tenant. - - - - -   | IV. 703  |
| 2. The Lord of a manor has not by law, independently of custom, any such property or interest in the timber, growing on the copyhold premises of a tenant, as entitles him to enter and cut. <i>Whitechurch v. Holworthy</i> .          | XIX. 213 |
| 3. Generally, if there is no custom for the tenants of a manor to cut timber, it belongs to the Lord. - - -   | XIX. 214 |
| 4. It seems, there may be as to timber on copyhold premises, what may exist unquestionably as to mines, a custom, that the Lord cannot take without consent of the copyholder, and <i>vice versa</i> . - - - - -                        | XIX. 214 |
| 5. Copyholder may by custom have such an interest in the timber, that he may himself cut: so he may have a special interest to prevent the Lord's cutting: but such a custom ought to be proved by extremely strong evidence. - - - - - | XIX. 214 |

WASTE.—1. }  
               2. } Lord's remedy for waste by copyholder.  
               3. }

- |   |         |
|---|---------|
| 1. The Lord of a manor is confined to his legal remedy, forfeiture, for waste committed by a copyholder; and has no equity for an Injunction and Account. Upon the evidence the bill was dismissed. <i>Dench v. Bampton (a)</i> .   | IV. 700 |
| 2. No action of waste by Lord against a copyholder. -   | IV. 706 |
| 3. <i>Quære</i> , whether upon waste by a copyholder by cutting timber the Lord can bring Trover; particularly where by the custom the right to the tree, when cut, is in both. The case of Lord and tenant is not like that of tenant for life and the reversioner. Their rights are upon the same ground; and the reversioner enters for the forfeiture: but the Lord must have it presented by the homage. - - - - - | IV. 706 |

See *Contract* 69. *Devise* 2. 9. 38. *Marshalling* 1. *Mortgage* 25. (*Equitable* 12.) *Parent* 1. *Power* 35. *Revocation* 28. *Trust* 39. *Voluntary Settlement, &c.* 6. *Will* 85. 96.

## COPYHOLD HEIR.

See *Infant* 27.

## COPYRIGHT.

1. In prints, whether the date and name are necessary for that purpose, and ought to appear on the bill.
2. Improvements on another's copyright not protected.
3. Injunction against colourable abridgment.
4. Injunction against prerogative copies of bibles, &c. printed in *Scotland*.

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(a) Over-ruled, see the note, Vol. IV. page 707 a.

- 5. Whether in the King's printer by the patent ; or mere authority.
  - 6. No injunction or account, if an action could not be maintained.
  - 7. Injunction refused till recovery in an action.
  - 8. { Distinction between publishing another's work and an
  - 9. { original work of the same nature, and under a similar title.
  - 10. In Lord *Melville's* Trial under order of the House of Lords.
  - 11. Almanacks not prerogative Copies.
  - 12. { In the individual work ; not the general subject ; as
  - 13. { a Court Calendar, map, &c.
  - 14. }
  - 15. Injunction pending action on originality of a work on architecture.
  - 16. Whether invaded by copying a map in a fair history of all maps of a county.
  - 17. In music.
  - 18. Violated fifteen years : no injunction, until established at law.
- 
- 1. *Quære*, whether the clause in stat. 8 Geo. 2. c. 13, directing, that the date and name shall be engraved on each print, relates to the penalties only ; or whether that is necessary to maintain the exclusive property ; if so, whether it ought to appear on the Bill. *Harrison v. Hogg*. - - - - - II
  - 2. The plaintiff published a book of roads of *Great Britain*, comprising *Paterson's* Road Book, to the copyright of which the plaintiff was not entitled, with improvements and additions obtained by actual survey and otherwise. An Injunction to restrain a publication of an edition of *Paterson*, comprising the plaintiff's improvements and additions, was refused. *Cary v. Faden*. - - - - - V
  - 3. Injunction against a colourable abridgment of the Term Reports among other Law Reports till Answer or farther order upon certificate of the Bill filed. *Butterworth v. Robinson*. - - - - - V
  - 4. Upon the Answer to a Bill by the Universities of *Oxford* and *Cambridge*, the King's printer not joining, but being made a defendant, an Injunction, restraining the sale in *England* of bibles, prayer-books, &c. printed by the King's printer in *Scotland*, was continued to the hearing. *The Universities of Oxford and Cambridge v. Richardson*. - - - - - VI
  - 5. Whether the patents granted to the King's printer vest the copyright, or are merely authorities, *quære*. - - - - - VI
  - 6. The Court will not act either by giving an Injunction or an Account, even upon a submission in the Answer, upon a publication of such a nature that an action could not be maintained. *Walcott v. Walker*. - - - - - VI
  - 7. Injunction against an invasion of copyright, depending

- upon the effect of an agreement, refused till recovery in an action. - - - - - VII. 1
8. Injunction to restrain publishing a magazine, as a continuance of the plaintiff's magazine in numbers, and as to communications from correspondents, received by the defendant, while publishing for plaintiff; not preventing the publication of an original work of the same nature, and under a similar title. *Hogg v. Kirby.* - - - VIII. 215
9. Though copyright cannot subsist in an *East India* calendar, as a general subject, any more than in a map, chart, series of chronology, &c. it may in the individual work; and, where it can be traced, that another work upon the same subject is, not original compilation, but a mere copy, with colourable variations, will be protected by Injunction; which in this instance was continued till the hearing, without a trial at law. *Matthewson v. Stockdale.* - - - - - XII. 270
10. Injunction until the hearing, under an order of the House of Lords for publishing Lord *Melville's* Trial, and prohibiting any other publication of it. *Gurney v. Longman.* - - - - - XIII. 493
11. Almanacks not prerogative Copies. - - - - - XIII. 508
12. Injunction against pirating a Court Calendar: the individual work creating copyright; though the general subject, as in the case of a map, or chart, is common. *Longman v. Winchester.* - - - - - XVI. 269
13. Distinction between the right to publish a similar work, or set up a similar trade, and the fraud of identifying it with the work or trade of another. Injunction in the latter case. - - - - - XVII. 342
14. Copyright in an individual work; not in a general subject; though from its nature the consequence may be close resemblance, and considerable interference; as in the case of maps and road books. *Wilkins v. Aikin.* - - - XVII. 422
15. Action directed, to try, whether a work on architecture was original, with a fair use of another work, by quotation and compilation; which in a considerable degree was admitted: the Injunction maintained in the mean time; viz. by permitting the sale on undertaking to account according to the result of the action. - - - XVII. 422
16. Whether the copying of a map as an illustration in a fair history of all the maps of a county, would be restrained, as an invasion of copyright, *Quære.* - - - - - XVII. 425
17. Copyright in music. *Platt v. Button.* - - - - - XIX. 447
18. Copyright, not asserted against violations by several persons for fifteen years, not protected by injunction, until established at law. - - - - - XIX. 447

See *Practice* 76. 109.

CORNING-HOUSE.

See *Injunction* 60.

## CORPORATION.

1. No information in nature of *Quo warranto* for usurpation by a mere claim, without admission: nor against a member until removal.
  2. The King may seize the franchise for a forfeiture.
  3. Corrupt execution of a trust controlled.
  4. Compelled to answer individually a charge of destroying a trust deed.
  5. Account on verdict finding By-law void.
  6. In nature of a partnership, account for a member.
  7. No instance of By-law restraining a member from engaging in the same trade.
  8. By-law in restraint of trade by custom.
  9. Distinction between charter and contract with reference to By-law.
- 
1. Information in nature of *Quo warranto* upon 9 Anne, c. 20, for usurping the office of free burgess does not lie against the mere claim of one, who, though elected, never was admitted; nor against a member, till removal by the Corporation. *The King v. Ponsonby.* - I.
  2. King may at his discretion seize the franchise of a Corporation, guilty of an offence amounting to a forfeiture. I.
  3. Jurisdiction over a Corporation, as an individual, to control the corrupt execution of a trust. - - - XIV.
  4. The Mayor, or other individual member of a Corporation, trustee of a rent-charge out of the estate of such member for a charitable use, must answer, not only with the rest under their common seal, but also individually, a charge of having destroyed or cancelled the deed. - - - - - XIV.
  5. The By-law of the Corporation of the company of *Whitstable* fishermen, that any freeman, engaging in any other oyster fishery on the coast of *Kent*, should forfeit £10, and until payment should be excluded from all share of the profits, which should in the mean time be divided, as if he had wholly ceased to be a freeman, being in an action held void, an account was decreed; with a declaration, that the plaintiff having been unduly prevented by the By-law from working in any manner as freeman, and participating, is to be considered, though he did not work, or tender himself or any one for him to work, as *prima facie* entitled in the most beneficial manner, without prejudice to the defendant's establishing, that at any particular periods he could not have entitled himself to earnings, or not as beneficially as claimed, in case no such By-law had been made. *Adley v. The Whitstable Company.* XVII. 315. XIX
  6. Jurisdiction in equity against a Corporation, in nature of a partnership, in favor of a member, as well as a stranger, by an account of the profits; where there is no remedy, or not a complete remedy, at law; and the

difficulty of executing the decree from the peculiar circumstances and nature of the property will not prevent it; though that may be a ground for some modification; for instance, not recalling profits, already distributed; as an account is directed in a limited way, dispensing with vouchers, &c. upon the objection from length of time. - - - - -

**XVII. 315**

7. No instance of a By-law, restraining the individual members of the Corporation from being concerned, either in any other place, or within given limits, in the same trade.

**XVII. 322**

8. By-law, even in restraint of trade to a certain extent, which would not have been good under the authority of charter, may be good by custom. - - - - -

**XVII. 322**

9. Distinction between Charter and Contract. That, which may be the subject of contract between the different interests in a partnership might not be good as a By-law; for instance, an agreement among the citizens of *London*, who have as extensive a power of making By-laws as any Corporation, not to sell, except in the markets of *London*, would be good; though a By-law to that effect has been declared bad by the legislature. - - - - -

**XVII. 322**

See *Charity* 72. 73. *Landlord and Tenant* 14. *Partner* 16.  
*Party* 15. 16. 17. *Trust* 19.

**COSTS.**

1. Not on contract not meritorious.
2. Out of fund, ordered to remain in Court for the account.
3. Not to a College; unless proved a Corporation.
4. Apportioned.
5. Not of discovery; if defendant compels plaintiff to file the bill.
6. Of dismissal over against other defendants.
7. Not on application to compel election in bankruptcy.
8. Taxed after long time, and payment.
9. } As to reviving for costs; distinction between the death
10. } of the party to receive, or pay.
11. }
12. At law by judgment for defendant: for plaintiff added to the damages.
13. Revivor for, only on death of plaintiff, entitled; though before Report, and not out of particular fund.
14. Creditor's unconscientious use of legal process.
15. Of doubt on the will out of the general property.
16. Discretionary.
17. On petition, not exception.
18. Proceedings before the Chancellor, as Visitor of Royal Foundation, not within the Statute for taxing.
19. Not on proving debt under the usual decree.
20. Of question on a particular fund charged on that fund; and mistake on that corrected as relief.
21. No revivor for them alone, unless to be paid out of the estate.
22. Answer looked at.





23. Security by plaintiff, abroad, refused.
24. Appeal, where costs are a subject of relief.
25. Not to plaintiff, on dismissal, from the difficulty.
1. No costs to any party claiming under a contract not meritorious, even though recovered upon; not even to a trustee. - - - - - I. 55
2. Costs given; and the fund, being in Court, ordered to remain till the account; the costs to come out of the balance if any due to the party, as far as it would go. I. 221
3. Costs cannot be given to a College individually, nor as a Corporation, unless proved so. - - - - - I. 246
4. Costs given out of the respective estates. - - - - - I. 280
5. Rule, that plaintiff in Bill of Discovery shall pay costs in all cases, is too general: he ought only, where he files a bill in the first instance; not where compelled to it by defendant's refusal. - - - - - I. 423
6. Bill dismissed with costs as to one defendant: those costs given over against the others. - - - - - I. 426
7. No costs on application to put party to election to proceed at law or come in under a Commission of Bankruptcy. - - - - - II. 11
8. Bill of costs examined after a long period, and even after payments made. - - - - - II. 203
9. After verdict on Issue directed deeds decreed to be delivered up to the plaintiff: after the Master had settled the amount of the costs, but before the Report, the plaintiff died: on demurrer to so much of the bill by his devisee as prayed revivor the Court inclined to hold the rule not to revive for costs only not applicable, where the party to receive them dies; also that the taxation would relate to the time, when the amount was settled, so as to take it out of the rule: but the demurrer was over-ruled; because it did not appear on the Bill, that the decree had been executed by delivering up the deeds. *Morgan v. Scudamore*. - - - II. 313
10. Where the party to pay costs dies, and they are not taxed, no revivor for them only, because a personal demand. - - - - - II. 315
11. If the debtor in costs at law dies, they die with him: if the party to receive them dies, his representative may have a *scire facias*. - - - - - II. 316
12. Judgment for costs at law can be only under the Statute, where there is judgment for the defendant; where for the plaintiff, costs are added to the debt or damages. - II. 316
13. Revivor for costs only on the death of the plaintiff, entitled to them; though before the Report, and they were not to come out of a particular fund. *Morgan v. Scudamore*. - - - - - III. 195
14. A creditor, being decreed to re-convey on payment of what was due on an estate in the *West Indies*, acquired by an unconscientious use of legal process, was deprived

## COSTS.

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of costs subsequent to the payment of money into Court. <i>Lord Cranstown v. Johnston.</i> - - - - -	V. 277
15. Costs of a doubt upon the meaning of the Will out of the general property. <i>Barrington v. Tristram.</i> -	VI. 345
16. Costs entirely in the sound discretion of the Court. -	VII. 28
17. The proper course for costs is by Petition, not Exception. <i>Lucas v. Temple.</i> - - - - -	IX. 299
18. Proceedings before the <i>Lord Chancellor</i> , as exercising the visitatorial power upon a Royal foundation, not within the Statute for taxing bills of costs. <i>Ex parte Dann.</i>	IX. 547
19. Costs of proving a debt before the Master under the usual decree upon a creditor's Bill not allowed. <i>Abell v. Screech.</i> - - - - -	X. 355
20. Where a question arises upon the interest in a trust fund, separated from the general residue, the costs must come out of the particular fund; and having been given by the decree, as specifically prayed by the bill, out of the general personal estate, the decree, though affirmed in other respects, was corrected in that particular; being considered as relief prayed; and therefore not within the rule against appealing for costs only. <i>Jenour v. Jenour.</i> - - - - -	X. 562
21. No revivor for costs alone; unless to be paid out of the estate. - - - - -	X. 572
22. The Court looks at the Answer upon a question of costs. <i>Vancouver v. Bliss.</i> - - - - -	XI. 458
23. Security for costs by a plaintiff gone abroad, refused, after Answer, on affidavit of his intention to return; and his family remaining in this country. <i>White v. Greathead.</i> - - - - -	XV. 2
24. Distinction, where costs are disposed of as a subject of relief: an appeal not open to the objection upon an appeal for costs only. <i>Taylor v. Popham.</i> - -	XV. 72
25. The bill being dismissed, costs to the plaintiff on account of the difficulty and novelty of the case, refused. <i>Wykham v. Wykham.</i> - - - - -	XVIII. 395

### TRUSTEES, &c.

TRUSTEES, &c. HEIR.—1. To trustees. Not for or against heir defendant, raising a point, and failing.	
2. To trustees, brought into Court, and failing in a claim, merely submitted.	
3. Of course to trustees accounting fairly, &c.	
4. Not to trustee, whose neglect occasioned the suit.	
1. Costs to trustees: but none for or against heir at law, defendant, who raised a point, and failed. - - -	I. 205
2. Costs to trustees and executors, brought into Court, though they made a claim, and failed; if merely by way of submission. - - - - -	I. 205

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3. Costs of course out of the fund to Agents, Receivers, and Trustees, who have accounted fairly, and paid money into Court. - - - - -

I.

4. No costs to a trustee, whose neglect occasioned the suit. *O'Callaghan v. Cooper.* - - - - -

V.

See *Annuity* (Memorial 9.) *Appeal* 13. *Arbitration* (Fraud 1.) *Attorney and Solicitor* (Attorney and Client 5. 6.) (Lien 1. 2. 6. 7. 8.) *Biddings, opened* 5. 6. *Bill of Review* 1. *Bankrupt* 3. (Attorney and Solicitor 4.) (Privilege 1.) (Proof 32. 33.) (Surplus 5.) *Charge* 12. *Charity.* *Contract* 8. 70. *Dower* 3. *Evidence* 4. *Executor* 3. 17. 42. 64. *Fraud* 2. 5. 9. 17. *Heir* 10. *Infant* 22. 25. *Interpleader* 1. 10. 11. *Laches* 17. *Legacy* 39. *Lunatic* 3. 20. 63. *Mortgage* 15. 24. *Ne exeat Regno* 10. 12. *Partition* 3. *Pauper* 4. *Practice* 3. 20. 25. 26. 37. 41. 43. 47. 52. 66. 68. 83. 107. 140. 141. 158. 172. 211. 243. 244. 266. 285. 324. 328. 355. *Prochein Amy* 3. *Receiver* 4. *Settlement* 6. *Trust* 13. 18. 25. 63. 70. 122. *Will* 211.

## COSTS OF DEMURRER.

See *Demurrer* 14.

## COSTS OF DISCOVERY.

See *Discovery.* *Practice* 196. 197.

## COSTS IN EQUITY.

See *Power* 20.

## CO-SURETY.

See *Principal and Surety* 9. 18.

## COUNSEL.

1. Liable to costs for scandal, &c.
2. Not to reveal advice to his client.
3. Retainer by the adverse party.

1. Counsel and Agent liable to costs for scandal and impertinence. - - - - -

XVI

2. Counsel or Attorney cannot be called upon to reveal the advice given to the client. Demurrer therefore overruled as to the case; and allowed as to the opinion. -

XVIII

3. The former practice not to accept a retainer against a client from the adversary without giving notice and an option relaxed: but not to be accepted, if the Counsel knows what may be prejudicial to the former client, though refusing to retain. - - - - -

XIX

See *Bankrupt* (Commission 2.) *Pleading* (Demurrer 30.) *Practice* 134. *Vendor and Vendee* 28.

## COUNTRY BANK.

See *Banker* 1. *Bankrupt* (Commission 38.) (Lien 2.)

## COUNTRY CAUSE.

See *Practice* 373.

## COUNTY RATES.—COVENANT.

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### COUNTY RATES.

See *Charity* 45.

### COURT CALENDAR.

See *Copyright* 12.

### COURT OF CHANCERY.

See *Evidence* 10. *Lunacy* 62. 63. 66. *Practice* 176.  
*Prohibition* 3.

### COURT OF DELEGATES.

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### COURT, ECCLESIASTICAL.

See *Baron and Feme* (*Separation* 7.) *Ecclesiastical Court*.  
*Practice* 178. *Will* 277.

### COURT OF EQUITY.

See *Jurisdiction* 27. 28. 29. *Power* 20.

### COURT, FOREIGN.

1. Presumption, whether decisions are legal.

1. Presumption, that the Courts of foreign countries decide  
according to law; but open to evidence. - - -

VI. 730

### COURT, PREROGATIVE.

See *Will* 176.

### COVENANT.

1. Equitable relief: but construed as at law.

2. To forbear suit.

3. For enjoyment and rent implied.

4. Implied within general bond for performance.

5. No action by him, for whose benefit it is given to another.

6. To insure against fire broken.

7. { Relief against breach by non-payment at the time, and  
8. { of covenant to repair, if not such as to make repair  
impracticable, disapproved.

9. { To leave personal estate: admitting disposition during  
10. { life, but not in effect testamentary.

1. Construction of covenants the same in equity as at law:  
but equity will relieve against a strict performance upon  
equitable circumstances, and no wilful default. - -

III. 692

2. As to the effect of a covenant to forbear suit, *quære*. -

VI. 821

3. Implied covenant for quiet enjoyment under the words  
“granted and demised,” and for payment of rent under  
“yielding and paying.” - - -

IX. 330

4. Bond, generally, for the performance of covenants, ex-  
tends to implied, as well as express, covenants. - -

IX. 330

5. No action of covenant by a person, for whose benefit a  
covenant is entered into with a third person. - -

XIV. 187

6. Injunction against an Ejectment for breach of covenant  
to insure against fire refused. *Reynolds v. Pitt*. -

XIX. 134

7. Relief against forfeiture by breach of covenant with re-  
ference to non-payment of money at the specified time,

- |     |   |             |
|-----|---|-------------|
|     | on the erroneous notion, that by payment of interest the party is reinstated. - - - - -   | Vol.<br>XIX |
| 8.  | The ground in <i>Hack v. Leonard</i> , 9 Mod. 91, for relief against breach of covenant to repair, if not such as to make repair before the end of the term impracticable, disapproved. - - - - -   | XIX         |
| 9.  | Covenant to leave a portion of the personal estate as upon an intestacy does not prevent the covenantor's expending the whole; or admit his reserving part for his own benefit, nor consequently investing it in land. -  | XIX         |
| 10. | Father, under covenant for an equal division at his death of all the property he should die seised or possessed of between his two daughters or their families, though he retains the power of free disposition by act in his life, cannot defeat the covenant by a disposition in effect testamentary; as by reserving to himself an interest for life. <i>Fortescue v. Hennah</i> . - - - - - | XIX         |
- See Construction 5. 6. 8. Contract. Executory Trust 1. 2. 3. Forfeiture 3. 6. Infant 4. 8. Injunction 6. 7. Landlord and Tenant 16. 18. 56. Lien 3. Penalty 1. Satisfaction 10. 27. 29. 30. Trust 125.

## COVENANT AGAINST ASSIGNING.

See Landlord and Tenant 26. 27. 30.

## COVENANT TO ASSIGN.

See Tenant 2.

## COVENANT FOR PERPETUAL RENEWAL.

See Landlord and Tenant 47.

## COVENANT TO REPAIR.

See Forfeiture 9. Landlord and Tenant 57.

## COVENANT, VOLUNTARY.

See Consideration 2.

## COVENANT TO STAND SEIZED TO USES.

See Use 2.

## COVERTURE.

See Baron and Feme.

## COVIN.

See Fraud.

## CREDIT OF WITNESSES.

See Practice 372. 373.

## CREDITOR.

1. Relieved against the act of the Court.
2. Not driven to a fund, on which no effectual demand appears; and a right to sue personally even if effectual.
3. Whether settlement after marriage, reciting previous parol agreement, can stand against them.

## CREDITOR.

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4. Not charged with laches under devise for debts as an individual.
  5. Preference to legatees.
  6. Distinction with reference to the Statute of Fraudulent Devises.
  7. Marshalling for creditors by simple contract under a charge of debts.
  8. Favorable construction for them.
  9. Satisfied by execution against the body.
- 
1. A creditor prevented by the act of the Court from obtaining judgment put in the same situation, as if he had it. - - - - - VI. 93
  2. The property of an *American* loyalist having been confiscated during the *American* war, subject to the claims of such of his creditors as were friendly to *American* independence, to be made within a limited time, and in fact, according to the evidence farther restrained to the inhabitants of the particular state, a bill to have bonds delivered up, or to compel the creditor to resort, in the first instance, to the fund arising from the confiscation, was dismissed, on the ground, that it did not appear that the creditor had the clear means of making his demand effectual against that fund: the *Lord Chancellor* also expressing an opinion in favor of the right to sue personally, even in that case, against the authority of *Wright v. Nutt*, 3 Bro. C. C. 326. 1 Hen. Bla. 136. *Wright v. Simpson*. - - - - - VI. 714
  3. Whether a settlement after marriage, reciting a parol agreement before marriage, which had actual existence, can stand against creditors, *quære*. - - - - - XII. 74
  4. Laches not to be imputed to creditors under a devise for debts, as to an individual devisee, to prevent or limit the account of rents and profits, even against an infant heir. *Williams v. Coussmaker*. - - - - - XII. 136
  5. Distinction between creditors and legatees under a charge of debts and legacies. The former are to be paid in preference. - - - - - XII. 154
  6. The Statute of fraudulent devises would prevent a devise for legacies to the prejudice of creditors by specialty; but not a devise for debts generally; though that might be the effect. - - - - - XII. 154
  7. Under a charge of debts creditors by simple contract may by marshalling follow devised estates; if no descended estates; or they have been applied. - - - - - XII. 154
  8. Different construction in favor of creditors, wife, or children, and in other cases. - - - - - XIII. 176
  9. The body being taken in execution, the debt is satisfied. XIII. 193

See Answer 1. Assets 8. Bankrupt. Baron and Feme 13. 16. (Separate Property 5. 17.) Bond 3. 4. Chose in Action 1. Contract 18. Copyhold (Surrender 6. 7.) Costs 14. Election 7. 28. Exoneration 5. Fraud 22.

*Fraudulent Settlement* 1. *Interest. Judgment. Laches*  
3. 12. *Mortgage* 32. *Parent and Child* 3. *Partner* 8.  
9. 16. *Power* 26. 27. *Practice* 64. 108. (*Party* 7.)  
*Principal and Surety. Settlement* 4. 6. 9. *Will* 145.

CREDITOR AND DEBTOR.

1. Debtor, not charged in execution after two terms in prison, discharged.
  2. Collusion with executor.
  3. Voluntary bond under strong moral obligation.
  4. Conveyance in consideration of arrears under voluntary bond.
  6. Distinction between bill without indorsement for an antecedent debt and discount.
  6. Suit by creditor, where representative cannot, or will not, act. Whether creditor by old judgment can have a decree without recovery.
  7. Discharge from commitment for breach of writ of execution of decree for payment on *devastavit*, before, but not ascertained or decreed, till after, the time fixed by Insolvent Act.
  8. Assignment without possession.
  9. Distinction between debtor's death in prison under commitment of Court of Equity for breach of order of payment and under a writ of *capias*.
- 
1. Debtor, two terms in prison without being charged in execution, is entitled to his discharge. - - - - - 1
  2. Creditor permitted to sue the debtor in equity, upon collusion with the executor. - - - - - 1
  3. Voluntary bond, though given under a strong moral obligation, a marriage contracted, and property received as husband, by a man, having a wife living at the same time, void as against creditors. *Gilham v. Locke*. - 1
  4. Arrears, accrued under a voluntary bond, a valuable consideration, sustaining a conveyance against creditors. - 1
  5. Bill taken for an antecedent debt, without indorsement, proving bad, the antecedent debt may be resorted to; but if the bill is discounted without indorsement, and no antecedent debt, it is evidence of a purchase; and there is no demand. - - - - -
  6. Suit by a creditor against persons accountable to the estate allowed in a special case; as, where the representatives cannot, or will not, act. One object of the suit being the establishment of an agreement for carrying on a colliery, the plaintiff must take it subject to all engagements, as a continuing concern. No security to be given for the result of the account. Whether the plaintiff, being a creditor by judgment seventeen years old, can have a decree without putting himself in a situation to proceed at law, viz. reviving by *scire facias*, *quære*. The bill would be retained, that the debt might be substantiated by an Issue, or other proceeding at law. *Burroughs v. Elton*. - - - 1



Discharge by <i>Habeas corpus</i> , from Commitment under an Attachment for breach of a Writ of execution on a Decree for payment of money on account of a <i>Devastavit</i> , as executor, committed before, though not ascertained by the Report, or decreed to be paid, till after the time, fixed by an Insolvent Act; of which the party had taken the benefit. <i>Wheldale v. Wheldale</i> .	XVI. 376
Assignment of property, retaining possession, fraudulent against creditors.	XVII. 197
Death of the debtor in prison by Commitment of a Court of Equity for breach of an order of payment under an Award does not extinguish the debt, as on a Writ of <i>capias</i> ; the former not, as the latter, excluding other remedies; and the Statute James 1, preventing satisfaction. <i>Mildred v. Robinson</i> .	XIX. 585

COMPOSITION.—PARTY.

POSITION.—1. Binding under circumstances; though not strictly fulfilled.	
Though an agreement for a composition, generally, is not binding on the creditor, unless absolutely and strictly fulfilled, a bond-creditor, having concurred in a general resolution for a composition, to be secured by notes, was under the circumstances, with reference to the interest of the other creditors, restrained from taking execution in an Action upon the bond, on non-payment of the notes, beyond the terms of the composition. <i>Mackenzie v. Mackenzie</i> .	XVII. 372
RTY.—1. Principle, that debtor to the estate cannot be a party to creditor's bill against executor, applies to creditor overpaid by executor.	
The general principle, on which a debtor to the estate cannot be made a defendant to a bill by a creditor or residuary legatee against the executor, unless collusion, insolvency, or some special case, applies equally to the case of a creditor overpaid by the executor. In a case of that sort, upon the circumstances of suspicion, particularly attending to the character of the creditor, as Attorney and confidential agent to the testatrix, an Issue was directed. <i>Alsager v. Rowley</i> .	VI. 780

See Assets 41. Bankrupt 28. (Partner 18.) (Reputed Owner 5.) Baron and Feme 95. 96. Bill of Exchange 14. Composition. Consideration 3. 6. Creditor. Decree 5. 6. Devise 5. Extent 1. Fraud 47. 48. Fraudulent Settlement 2. Judgment 14. Limitation. Marshalling. Merger 5. Partner 46. 47. 48. 49. Party 21. 27. Practice 377. Privilege (Arrest). Set-off 6. Voluntary Settlement, &c. 3.

CREDITOR BY JUDGMENT.  
See Tacking 7.

CREDITORS, JOINT AND SEPARATE.

See *Bankrupt* (Proof 20.)

CRIMINAL ACT OR CONTRACT.

See *Contract* (Illegal 13.)

CRIMINAL PROCEEDINGS.

See *Construction* 3.

CROSS BILL.

See *Contract* (Specific Performance 39. 40.) *Practice* 26. 338.

CROSS EXAMINATION.

See *Evidence* 41.

CROSS REMAINDERS.

1. Implied.
2. Implied among more than two devisees. Distinction between general and individual description.
3. Implied.
4. Between the several children of two daughters, and also between the two families.
5. Implied.

1. Cross remainders implied. *Burnaby v. Griffin.* - - - III
2. Execution of a direction by will to convey lands, to be purchased, by raising cross remainders among more than two upon the intention, by implication; without regard to the words "several and respective" in the limitation to the heirs. Distinction upon this subject between devises by a general description to a class of persons, not ascertaining the number, and to individuals named. *Green v. Stephens.* - - - XVI
3. The reasoning in the implication of cross remainders upon the expression "all the premises," &c. not satisfactory. XVI
4. Upon a devise in trust to settle on the testator's children in equal shares and proportions undivided for and during their respective lives, with remainder to their issue severally and respectively in tail general, with cross remainders over, there being two daughters, cross remainders inserted, not only among the several children of each, but also as between the two families. *Horne v. Barton.* - - - XIX
5. Implication of cross remainders under a direction in default of such issue to go over. - - - XL

See *Devise* 26. *Will* 104.

CROWN.

See *Bankrupt* 54. (*Extent* 1.) (*Lien* 2.) *Charity* 29. *Copyright* 4. 5. *Escheat* 3. *Extent.* *Friendly Society* 2. *Lunacy* 62. 63. 66. *Mines* 2. *Practice* 88. 89. *Prerogative* 1. *Prize* 4.

CUMULATIVE LEGACY.

See *Legacy* 50. 54.

**CURACY.**

*See Election of Curate and Vicar 2.*

**CURRENCY.**

*See Interest 35.*

**CURTESY.**

*See Election 18.*

**CUSTOM.**

*See Chester. Copyhold (Timber 2. 3. 4. 5.) London. York.*

**CUSTOM OF LONDON.**

*See Assets 3. London.*

**CUSTOM OF A MILL.**

*See Practice 77.*

**CUSTOM OF YORK.**

*See York.*

**CUSTOMARY HEIR.**

*See Copyhold (Surrender 9.)*

**CUSTOMARY PAYMENT.**

*See Tithe 13.*

**CUSTOMER AND BANKER.**

*See Bankrupt (Lien 4.) Bill of Exchange. Evidence 56. Principal and Surety 27. Short Bill 1.*

**CUSTOMER AND TRADESMAN.**

*See Account 6.*

**CY PRES.**

*See Charity 8. 9. 12. 14. 15. 17. 21. 54. 63. 78. 79. Power (Appointment 6. 11. 13. 14.)*

**DAMAGES.**

*See Bankrupt (Proof 11.) Good-will 1. 2.*

**DEATH.**

*See Domicil 2.*

**DEBT.**

1. Bequeathed as on a certain day.

1. Bequest of a debt, as it stood on a certain day, good. -

**VI. 170**

*See Answer 1. Bankrupt (Reputed Owner 3). Chose in Action. Creditor. Executor 23. Exoneration 10. Interest 1. Purchase 18. Revocation 5. 7. Satisfaction 34. Will 32. 33. 34. 222.*

**DEBT, CONTINGENT.**

*See Bankrupt (Proof 24.)*

DEBTOR.

See *Assets. Bankrupt (Partner 18.) Composition. Creditor. Devise 5. Extent 1. Fraud 22. Interest. Marshalling. Merger. Privilege (Arrest.)*

DEBTS.

See *Assets 20. 21. Charge 12. Devise 24. Insurable Interest 1. Interest 19. Will 161. 162. (Revocation 20.)*

DECLARATION.

See *Evidence (Pedigree 7.) Pleading 59.*

DECREE.

1. Against one, representing the inheritance, binds all remainders.

2. } Final, on a sum ascertained, equal to a judgment.

3. } Distinction, when for an account, &c.

4. On merits, enrolment not opened: nor staid for an appeal. Analogy to law.

5. General lets in creditor by decree or judgment without reviving.

6. Though equal to judgment as to personal estate, does not affect land.

1. Decree against a person, representing the inheritance, binding upon all remainders behind, by analogy to the rule at law, that a Recovery, in which a subsequent Remainder-man is vouched, bars all remainders behind, without prejudice to those intermediate. - - -

2. Decree equal to a Judgment at law. - - -

3. A final decree, upon a sum ascertained, is equal to a Judgment; but a mere decree for an account of the plaintiff's demand, and of the personal estate come to the hands of the defendant, with a mere direction for payment out of the result of that account, does not prevent the executor paying a judgment. *Perry v. Phelps.* - - -

4. Motion to open the Enrolment of a Decree, and to stay proceeding under it, to give an opportunity of appeal, refused: the Decree being made upon the merits: as at law a Judgment by default is vacated on Motion; not a Judgment on the merits. *Charman v. Charman.* -

5. Right of creditor by Decree, or Judgment, to come in under a general Decree, without reviving. *Mildred v. Robinson.* - - -

6. Decree, though equal to a Judgment as to personal estate, does not affect land. *Mildred v. Robinson.* - -

IX

IX

X

XVI

XIX

XIX
- PRO CONFESSO.
- PRO CONFESSO.—1. On two insufficient answers.

2. Not prevented by filing answer without receipt for costs. Waiver by taking Office-copy.

1. Information decreed to be taken *pro confesso* upon two insufficient Answers. *Attorney-General v. Young.* -

II

## DECREE.—DEED.

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2. To prevent a Decree *pro confesso* the defendant should have, not only an Answer upon the file, but also a receipt for the costs. The Answer being filed without payment or tender of the costs, the defendant was remanded, to give an opportunity of moving to take it off the file for irregularity; but, the plaintiff having taken an Office-copy of the Answer, that course failed. *Sidgier v. Tyte.* - - - - -

XI. 202

See *Appeal* 4. 5. 8. 10. *Executor* 34. *Practice* 7. 16. 87. 102. 186. 187. 293. 294. 303.

## DECREE ENROLLED.

See *Laches* 17.

## DECREE ON DEFAULT.

See *Practice* 238. 385. *Re-hearing* 5.

## DECREE PRO CONFESSO.

See *Practice* 104. 105. 106. 116. 121. 205. 308.

## DEED.

1. } Custody of title-deeds.
  2. }
  3. When corrected by articles.
  4. Not varied by parol.
  5. Impeached *dehors*.
  6. Lost: action without *Profert*.
  7. Not construed by subsequent events.
  8. Sealing and delivery essential: not signing, unless under a power.
  9. As to implication against express limitation.
  10. Void at law sustained in equity.
- 
1. *Prima facie* title-deeds are property in the custody of tenant for life: may be taken from a jointress upon her jointure being confirmed. - - - - -
  2. Where tenant for life is satisfied, and does not care about the title, but remainder-man is not, the Court will take care of the deeds; and not leave them in the hands of third persons, who have no right, to the prejudice of the remainder-man. - - - - -
  3. Though a formal mistake in a deed may be rectified by articles, of which it purports to be an execution, essential additions cannot be made to a conveyance from articles, of which it does not purport to be an execution; nor can the transaction be rescinded by the Court. *Mosely v. Virgin.* - - - - -
  4. A deed not to be varied by parol evidence of the actual agreement. *Jackson v. Cator.* - - - - -
  5. A deed may be impeached by matter *dehors*; as upon averment of illegal and corrupt consideration. - - - - -
  6. Action upon a lost deed without *Profert*. *Seagrave v. Seagrave.* - - - - -

I. 76

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V. 688

XIII. 318

XIII. 439

7. Deed construed as from the moment of execution; not by subsequent events.	Vol XV
8. Sealing and delivery essential to a deed; which, if delivered, may be a good deed, whether signed or not. If to be executed under a power with signature and sealing, both are necessary.	XVI
9. As to extending or reducing an express limitation in a deed by implication, <i>quære</i> .	XVII
10. Instrument, though void at law, may be sustained in equity.	XVII

CONSIDERATION.—VOLUNTARY.

CONSIDERATION.—1. Examined without allegation. Not *pro turpi causâ* upon a suspicious clause.

1. Clause in a deed of assignment of stock from a married man to a married woman, that she shall live, where he resides, though suspicious, is not sufficient ground to hold it *pro turpi causâ*. Want of allegation shall not prevent the Court from looking into the consideration. I.

VOLUNTARY.—1. Bill to have it delivered up, dismissed. Cross bill retained with liberty to sue upon a covenant.

1. Bill to have a voluntary deed delivered up dismissed: Cross bill to execute it retained for a year, with liberty to sue upon a covenant in the deed. *Colman v. Sarrel*.

See Construction 1. Contract (Illegal 5.) Election 37. 38. Evidence 15. (Presumption 5. 6. 7.) (Witness 12. 13.) Execution 4. 5. Jurisdiction 27. Lien 1. 12. Pleading 1. Power 39. Practice 2. 22. 349. Presumption 1. Profert 2. 3. Purchase 17. Title-deeds. Trust (Resulting 2.) Voluntary Settlement, &c. Will 29. 53. 146. 311.

DEED, DEPOSITED.

See Mortgage (Equitable 2.)

DEED, LOST.

See Mortgage 59.

DEED OF SEPARATION.

See Baron and Feme.

DEED, TESTAMENTARY.

See Will 31.

DEFAULT.

See Practice 385. Re-hearing 5.

DEFECTIVE CONVEYANCE.

See Contract 78.

DEFENDANT.

See Revivor 1.

## DELEGATES, COURT OF.—DEMURRER.

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### DELEGATES, COURT OF.

See *Will* 139. 143. 176. 211.

### DELIVERY.

See *Deed* 8. *Execution* 4. *Voluntary Settlement*, &c. 4. 5..

### DELIVERY OF INSTRUMENTS.

See *Annuity* (*Jurisdiction* 2.) *Policy* (*Publick* 1.) *Power* (*Of Attorney* 1.)

### DELIVERY OF POSSESSION.

See *Possession* 1.

### DEMONSTRATIVE LEGACY.

See *Legacy*.

### DEMURRER.

1. The ground a short point for a clear dismissal with costs.
  2. Set down, withdrawn on payment of costs.
  3. No decree, where defendant might have demurred.
  4. General, if good to the relief.
  5. *Ore tenus*.
  6. For want of parties, whether it must state them.
  7. And Answer, not covering all the charges, over-ruled.
  8. To bill, stating payment according to the contract, for goods, exported to *America*, but under protest for fraud.
  9. To relief and answer to discovery.
  10. For uncertain allegation.
  11. Good as to one defendant; bad as to another.
  12. To discovery of a felony.
  13. By wife to discovery of felony by husband.
  14. Submitted to after setting down, and bill amended: £5 costs.
  15. Good to discovery, if to the relief.
  16. Partial, after general, over-ruled, by leave.
  17. Not good, and bad, in parts; as a plea.
  18. General allowed, or even after dismissal by Order, the cause may be set up again.
  19. Admission of one fact, besides denying combination, a compliance with the terms not to demur alone.
  20. General, if good to the relief.
1. The ground of a Demurrer must be a short point; upon which it is clear, the bill would be dismissed with costs at the hearing; therefore upon a Bill by assignees of a bankrupt for specific performance of an agreement previous to the bankruptcy to grant a lease, the case consisting of a combination of circumstances, the evidence might sustain the relief with some modification: upon which a Demurrer was over-ruled. *Brooke v. Hewitt*. - - - - -
  2. Order for defendants to be at liberty to withdraw a Demurrer, set down to be argued, on payment of costs to be taxed. *Downes v. East India Company*. - - -
  3. No decree, where the defendant might have demurred.

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VI. 686



- |   |       |
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| 4. General Demurrer lies: the plaintiff being entitled to discovery, but not to the relief. - - - -   | VI.   |
| 5. Demurrer <i>ore tenus</i> . <i>Pyle v. Price</i> . - - - -   | VI.   |
| 6. No general rule whether a Demurrer for want of parties must state the parties. - - - -   | VI.   |
| 7. Bill by creditors by Judgment, who had sued out <i>Elegits</i> , for a discovery of freehold estates; charging, that the defendant, upon his election as Member of Parliament, previously to the Judgment, gave in his qualification; and if the estates composing it were conveyed away since, it was without consideration. Demurrer as to the qualification, &c. and Answer to the rest: but not going to the charge of conveyance without consideration, the Demurrer was over-ruled. <i>Mountford v. Taylor</i> . - - - - | VI.   |
| 8. Bill, alleging fraud as to quantity and quality of goods sold, not discovered till they were exported to <i>America</i> ; that they were sold in consequence at a loss; and the plaintiff being threatened with an Action paid the original price according to the contract, under a protest, that he would seek relief in equity; and praying an account and payment in respect of the loss, and a commission to <i>America</i> . Demurrer allowed. <i>Kemp v. Pryor</i> . - - - -  | VII.  |
| 9. The rule, that, if the plaintiff is not entitled to the relief, though entitled to discovery, a general Demurrer holds, does not preclude the defendant from demurring to the relief, and answering as to the discovery. <i>Hodgkin v. Longden</i> . - - - -   | VIII. |
| 10. Demurrer allowed: the bill not alleging with sufficient certainty, by whom the duties claimed by the city of <i>London</i> under <i>Letters patent</i> , in respect of which a discovery was prayed in aid of an Action, were payable. <i>The Mayor, &amp;c. of London v. Levy</i> . - - - -  | VIII. |
| 11. Though a Demurrer cannot be good in part and bad in part, as to the matter demurred to, it may be good as to one defendant, and bad as to another. - - - -  | VIII. |
| 12. A bureau, delivered for the purpose of repairs to a person, who discovered money in a secret drawer; which he converted to his own use. This amounts to a felony; and upon that ground a Demurrer to a Bill of discovery was allowed. <i>Cartwright v. Green</i> . - - - -  | VIII. |
| 13. A married woman may demur to a discovery, that may subject her husband to a charge of felony. <i>Cartwright v. Green</i> . - - - -  | VIII. |
| 14. A Demurrer, set down for argument, being submitted to, and the bill amended, £5 costs were allowed. <i>Anonymous</i> . - - - -  | IX.   |
| 15. Demurrer, good to the relief, is good to the discovery sought with a view to the relief. <i>Baker v. Mellish</i> . - - - -  | X.    |
| 16. After a Demurrer to the whole bill over-ruled the defendant may put in a Demurrer, less extended; but not without leave of the Court. <i>Baker v. Mellish</i> . - - - -   | XI.   |

## DEMURRER.—DESCRIPTION, ERRONEOUS. 215

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17. Demurrer cannot, as a plea may, be good in part, and bad in part. - - - - -	XI. 70
18. Though strictly by a Demurrer to the whole Bill the Bill is out of Court, yet even after a Bill dismissed by Order the cause has been set on foot again. - - -	XI. 72
19. Admission of a single fact, besides the denial of combination, a compliance with the terms not to demur alone.	XI. 73
20. A general Demurrer holds; where the plaintiff, entitled only to discovery, prays relief also. - - -	XI. 509

See *Bank of England* 3. *Bankrupt* (Proof 2.) *Costs* 3. *Evidence* (Witness 4.) *Injunction* 29. *Laches* 13. *Limitation* (Time 20. 22.) *Partner* 16. *Party* 15. 20. *Pleading*. *Practice* 69. 141. 215. 248. 249. 297. 359. *Privilege* 2. *Trust* 65. *Voluntary Settlement, &c.* 9.

### DEMURRER, ORE TENUS.

See *Party* 28. *Pleading* (Demurrer 26.)

### DENIAL.

See *Bankrupt* 53. (*Act of Bankruptcy* 18.)

### DEPOSIT.

1. Inferred from a mortgage and want of indorsement on some bills.	
2. Of bill remitted, indorsed, for a special purpose, while retained.	
3. Of deeds until a mortgage an equitable title.	
1. Inference from a mortgage and the want of indorsement upon some bills in a remittance, that the object as to the whole was deposit, not discount. - - -	XIX. 231
2. Bill remitted, indorsed, merely to enable the person receiving it to raise money to meet future advances, is, while retained, a mere deposit, applicable to the demands of the remitter, subject to the right under the indorsement of constituting a third person creditor by negotiating it; who in case of bankruptcy will prove.	XIX. 232
3. Deposit of deeds until a mortgage, as evidence of an agreement for a mortgage, a good equitable title. -	XIX. 258

See *Bankrupt* (Proof 28.) *Bill of Exchange* 13. *Fraud* 2. 49. *Interpleader* 2. *Lien* 2. *Mortgage* (Equitable.)

### DEPOSITIONS.

See *Evidence* 31. 32. 33. 34. *Practice* 124. 184. 286. 368. 393.

### DESCENDANTS.

See *Issue* 4.

### DESCENT.

See *Infant* 10.

### DESCENT AFTER DISSEISIN.

See *Infant* 27.

### DESCRIPTION, ERRONEOUS.

See *Legacy* 58. 59. 61.

**DESTRUCTION.***See Injunction 19. Waste 25.***DETAINDER.***See Bankrupt (Privilege 2.) Commitment 1.***DEVASTAVIT.***See Retainer 1.***DEVIATION.***See Bankrupt (Privilege 5.)***DEVISAVIT VEL NON.***See Will 284. 286.***DEVISE.**

1. General residuary did not pass a trust estate.
2. Estate, held by copy of Court Roll, but on intestacy distributable as personal, and otherwise differing from copyhold, passed under a residuary bequest of the personal estate; not under a general devise.
3. Of all freehold lands, includes leases for lives; though the limitations are inapplicable.
4. Of land specific of necessity. Distinction as to personal property.
5. For debts, effectual in law or equity, not within the Statute of Fraudulent Devises.
6. By the common law neither lands nor guardianship affected by will.
7. Remote reversion passed by general words; though the uses immediate: otherwise, if not a vested interest. Will, particularly executing express powers, not an execution of an implied one.
8. General words passed lands, originally under old mortgages; though no release of the equity of redemption.
9. General passed copyholds, afterwards purchased, and surrendered to uses declared, or to be declared, by will.
10. Devisor must have the estate at the dates of his will and death.
11. Under direction, that charges shall remain, until discharged by the several tenants for life, all the rents, &c. applicable during the life estates to principal and interest.
12. Of real estate in nature of a specific devise: otherwise as to personal.
13. Under the general word "estate," unless restrained, real estate passes.
14. Estate contracted for passes under subsequent devise.
15. Subject to an annuity in addition to jointure, debts, and portions; appointing "trustees of inheritance for the execution hereof." Whether any interest or power as to the real estate. Second case to another Court.
16. No claim on the personal estate by devisee under a contract for an estate with a defective title.

17. Every devise specific.
  18. General passes an equitable estate.
  19. Devisee not more favored than a particular legatee.
  20. Devisee or heir entitled under a contract for purchase, and to application of the personal estate: not unless a title.
  21. Before completion of purchase under a general contract passes the money.
  22. Under contract for purchase, if a title, in equity it is real estate; and the heir or devisee entitled to application of the personal estate.
  23. Charge of legacies by unattested paper under power reserved by devise, void.
  24. Reason of charge covering future debts and legacies, though by unattested instrument.
  25. Restraint of general words.
  26. Upon a fee "for want of such issue." Implication of cross-remainders.
  27. Charge for a charity void does not pass by residuary disposition; but sinks for specific devisee.
  28. Not universally limited by the purpose.
  29. Of one farm to A. and his heirs: of another "to A.:" the latter for life only.
  30. Not revoked by bankruptcy. Distinction of disseisin.
  31. Construction of proviso, that on descent of the family estate in tenant for life, the devise, &c. shall cease; as not affecting the son's estate tail.
  32. Vested remainder on estate in trustees during minority.
  33. Trustees under direction to correct defects in expression, &c. cannot change the limitations.
  34. Extent of general words.
  35. Legal distinguished from executory trust by will.
  36. By implication from recital of erroneous conception of right. Whether of election, expressed as to another.
  37. To B., after the death of A.: necessary implication if B. is heir.
  38. Of all real property passes copyhold.
  39. Implication.
  40. Entry presumed as devisee; not as mortgagee.
  41. Distinction between a charge by the act of another, or devisor, as to the heir's claim on failure of the object.
  42. Heir's right to an issue.
  43. Issue for satisfaction of the Court.
  44. Distinction between ejectment and issue, as to examination of witnesses.
  45. Void for uncertainty.
  46. Different by the same Will not affected by the same relation to devisor; unless connected by words, or the same object.
1. Under a general residuary disposition by will to a natural son, his heirs, executors, administrators, and assigns, for ever, to and for his and their own proper use and behoof, a trust estate did not pass (a). *Ex parte Brettell*.

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(a) See the note, page 579,

2. An estate, held by copy of Court Roll according to the custom of the manor, but in case of intestacy distributable as personal estate, and in other respects differing from copyhold, passed under a residuary bequest of the personal estate, not with copyhold estates under a general devise of all freehold and copyhold messuages, lands, &c. with limitations in strict settlement, upon the whole will and the circumstances. <i>Watkins v. Lea.</i> -	VI. 633
3. Devise of all freehold lands would include leases for lives, though the limitations are inapplicable. - - -	VI. 642
4. Every devise of land must of necessity be specific; whether in particular or general terms: otherwise as to personal property. - - - - -	VII. 147
5. A provision, by Will effectual in law or in equity for payment of creditors, is not within the Statute of Fraudulent Devises. - - - - -	VII. 323
6. By the common law a man could not by testamentary disposition affect his lands or the guardianship of his children. - - - - -	VIII. 370
7. A remote reversion in real estates and lands to be purchased and settled will pass by general words in a will; as, "all and every other my lands, tenements, and hereditaments;" though the uses are immediate. But, the purchase being postponed to the death of the devisor, the reversion in the estates to be purchased and settled to the same uses subsequent to his death, not being an interest vested in him, did not pass; and though upon the settlement a power of appointment was implied, the will, particularly executing express powers, did not amount to an execution of that implied power. <i>Attorney-General v. Vigor.</i> - - - - -	VIII. 256
8. Lands, originally held under old mortgages, passed by a general disposition by Will, as the testator's estate; though no release of the equity of redemption appeared. <i>Attorney-General v. Vigor.</i> - - - - -	VIII. 256
9. Copyhold estates, purchased and surrendered to uses declared, or to be declared, by Will concerning the same, passed according to a Will previous to the purchase, devising all copyholds generally, and therefore containing a description applicable to them. <i>Attorney-General v. Vigor.</i> - - - - -	VIII. 256
10. Devisor must have the estate devised both at the date of the will and at his death. - - - - -	VIII. 283
11. Devise upon several limitations for life and in strict settlement; with a direction, that incumbrances shall remain charged upon the estates respectively, until discharged by the several tenants for life, to whom they are respectively limited. All the rents and profits during the estates for life are to be applied to the incumbrances, principal as well as interest. <i>Milnes v. Slater.</i> - - - - -	VIII. 295

12. Every devise of real estate, whether in general terms or not, is in nature of a specific devise: otherwise, as to personal estate. - - - - - VIII. 305
13. Under the general word "estate" in a Will a real estate will pass; unless restrained, as in this instance, by the intention, collected from the whole will. *Woollam v. Kenworthy*. - - - - - IX. 137
14. An estate contracted for will pass by a subsequent devise of all lands; the devisor being equitable owner under the contract. - - - - - IX. 510
15. A. seised in fee, subject to a jointure of £500 a-year to his wife, by Will, duly executed to pass land, gave to his wife "£200 *per annum* during her natural life in "addition to her jointure;" his debts being previously paid; and to his two younger children £6000 each; and appointed three persons "as trustees of inheritance for "the execution hereof." Whether any interest in, or power over, the real estate passes to the trustees, *quære*. The *Lord Chancellor*, not being satisfied with a certificate of the Court of Common Pleas in the negative upon a case directed, sent a case to the Court of King's Bench; there being only one instance of sending a case back to the same Court to be reviewed. *Trent v. Hanning*. - - - - - X. 495
16. Devisee, claiming the benefit of a contract for the purchase of an estate, directed to go to the uses of the Will, the title proving defective, has no claim upon the personal estate, either to have the purchase-money, or another estate purchased, or the purchase completed notwithstanding the defect. *Broome v. Monck*. - - - - - X. 597
17. Every devise, whether particular or general, is specific; as the devisor must have the land at the date of the will; and continue to have it until his death. - - - - - X. 605
18. By a general devise an estate, in which the devisor has acquired the equitable title, passes. - - - - - X. 605
19. Devisee not to be more favored than a particular legatee. - - - - - X. 608
20. Devisee or heir entitled to the benefit of a contract for purchase, and to an application of the personal estate in payment, if a title can be made: not otherwise. - - - - - X. 611
21. Contract for a purchase, generally: by a devise of the real estate, before the purchase is completed, the money will pass. - - - - - X. 613
22. By a contract for the purchase, if the vendor has a good title, in equity it is the real estate of the purchaser; and will pass by his Will; or descend; and the devisee or heir may call for application of the personal estate in payment. - - - - - X. 613
23. Devise and bequest of all the testator's real and personal estate in *Grenada* to pay all such annuities, legacies, or bequests, as he should give or bequeath to be paid out of, or charged upon, his real or personal estate in *Gre-*

*nada*, by his Will or any Codicil, whether witnessed or not. A charge by an unattested Codicil is void: this being, not a charge by the Will of legacies, but a reservation by a Will, executed according to the Statute, of a power to charge by an unattested paper. As to the objection, that the real estate was not charged as a subsidiary fund to the general personal estate, *quære*. *Rose v. Cuninghame*. - - - - -

XII. 29

24. The reason, that a charge of debts and legacies upon real estate by a Will duly executed covers future debts and legacies, though by an unattested instrument, is their fluctuating nature. - - - - -

XII. 37

25. Devise by very general and extensive words restrained upon the apparent intention. *Green v. Stephens*. -

XII. 419

26. Devise to the first and other sons in tail-male, and, for want of such issue, to the daughter and daughters, her, and their heirs, as tenants in common; and, for want of such issue, to three nieces, and their several and respective heirs for ever, as tenants in common; and, for want of such issue, to the testator's right heirs. As to the estate of the nieces, the prior limitations having failed, and the implication of cross remainders, *quære*. *Green v. Stephens*. - - - - -

XII. 419

27. Trust of an annuity for a Charity, charged upon a devised estate, being void under the Act 9 Geo. 2. c. 36, does not pass by a residuary disposition; but sinks for the benefit of specific devisees. *Baker v. Hall*. -

XII. 497

28. It is not universally true, that the expression of a purpose, for which even a devise of land is made, limits the devise to the purpose expressed: where, for instance, there is a devise of land for payment of debts, it does not necessarily follow, that there is a trust for the heir after the debts paid. There is no general rule: but each case depends upon the circumstances. Where the purpose expressed is in favour of the party, to whom the bequest is made, the presumption for limiting the bequest is rather stronger. - - - - -

XIV. 322

29. Devise in these terms, "I give to *A.* my farm and lands "at *R.* to him his heirs and assigns for ever and I "also give to *A.* my farm and manor of *E.*" An estate for life only in the latter. *Paice v. The Archbishop of Canterbury*. - - - - -

XIV. 364

30. Devise of real estate not revoked by bankruptcy. Distinction in that respect between bankruptcy and disseisin. *Charman v. Charman*. - - - - -

XIV. 580

31. Proviso, that if any of the tenants for life in a devise and executory trust to convey in strict settlement, shall become possessed of the family estate, the devise or limitation directed shall thereupon cease and become void, or not take effect, and the persons next in remainder under the said limitations or directions shall



- thereupon become entitled to the possession. The first tenant in tail entitled under the proviso notwithstanding the descent of the other estate upon his father, the first devisee for life. *Stanley v. Stanley.* - - - XVI. 491
32. Devise to trustees and their heirs in trust to receive the rents, &c. until *A.* shall attain twenty-one; and immediately after he shall attain twenty-one to convey to the use of *A.* for life, and from and after the determination of that estate by forfeiture or otherwise in his life to trustees and their heirs during his life upon trust to preserve the contingent uses; and after his decease to the use of his first and other sons in tail male; and for default of such issue, or in case of the death of *A.* before twenty-one, upon a similar trust for other persons. *A.* takes a vested remainder for life after an estate in the trustees for so many years as his minority may last. *Stanley v. Stanley.* - - - XVI. 491
33. Direction to trustees to correct any defect or incorrect expression in the Will, and to form the settlement from what appears to them to be the testator's real meaning, does not authorize them to change the limitations. *Stanley v. Stanley.* - - - XVI. 491
34. Devise by very general words, "all messuages, lands," &c. and all other his real and personal estate, included money, in trust to be invested in land, and settled; though particularly charged on the estates devised. *Green v. Stephens.* - - - XVII. 64
35. Distinction between a legal devise and an executory trust by Will: in the latter the actual intention, if it is to be collected, is regarded in a much greater degree than in the construction of a legal devise by the same instrument. - - - XVII. 76
36. Devise by implication from the mere recital of an erroneous conception of right. As to an implied election, the Will imposing an express election in favor of another person, *quære.* *Dashwood v. Peyton.* - - - XVIII. 27
37. Devise to *B.* after the death of *A.*—*B.* being the heir at law, a necessary implication for *A.* for life. - - - XVIII. 40
38. Under a devise of "all my real property" copyhold estate passed to the devisee and his heirs. *Nicholls v. Butcher.* XVIII. 193
39. Devise in remainder to "the said *T. B.* for life," and after his decease to "the said *T. B.* son of my nephew *S.*" and his heirs. A nephew of the same name "*T. B.*" not being before mentioned, and in every other instance the devisee being pointed out by reference and particular description of the degree of relationship, the great-nephew held to be intended in both limitations. (Affirmed on Appeal.) *Chambers v. Brailsford.* XVIII. 368. XIX. 652
40. Entry of the devisee, having also a mortgage, presumed to be as devisee, if no trace appears of any of the steps usually taken by a mortgagee to get into possession. - XVIII. 393

- 41. Distinction extremely nice, perhaps not of easy application, between a charge on a devised estate, to be created by the act of another, and a charge created by the devisor; to the extent of that charge the intention appearing on the face of the Will not to give to the devisee: in the former case the heir has no claim: in the latter, the particular object failing, he takes to the extent of the charge. - - - - - XIX.
- 42. Question on execution of a devise to be determined by a jury, if the heir insists on an issue; although the three witnesses speak to the sanity of the devisor. - - - XIX.
- 43. The course upon a Bill to establish a devise is an Issue, for the satisfaction of the Court. - - - XIX.
- 44. Distinction between Ejectment and Issue, "*devisavit vel non*;" upon which this Court looks at the whole Record; and requires all the witnesses to be examined; who are the witnesses of the Court, not of the parties. - XIX.
- 45. Where it was impossible to ascertain the mistake in a devise, the name belonging to one, the description to another, it was held void for uncertainty. - - - XIX.
- 46. Different devises in the same Will not affected by the circumstance, that the devisees are in the same relation to the devisor, unless there are words by grammatical construction connecting the two devises; or the same object is stated as to both. - - - - - XIX.

AMBIGUITY.—EXECUTION.—REPUBLICATION.—REVOCATION.  
WITNESS.

- AMBIGUITY.—1. Latent open to evidence.
- 1. Latent ambiguity under a devise, where there are two persons of the name; and evidence is admissible: not, if it appears on the Will, who was intended. - - - XIX.
- EXECUTION.—1. Acknowledgment good.
- 2. Under the Statute of Frauds.
  - 3. Sealing not necessary: nor sufficient without signing.
- 1. Acknowledgment by devisor of his hand-writing to one of the witnesses, who did not see him execute, good. *Addy v. Grix.* - - - - - VIII.
  - 2. Execution of a devise under the Statute of Frauds; requiring signature by the devisor in the presence of three witnesses, and their attestation of his act by their subscription. - - - - - XVII.
  - 3. Sealing not necessary to the execution of a devise under the Statute of Frauds; nor sufficient without signing. XVII.
- REPUBLICATION.—1. Passes estate contracted for: payment out of the personal estate.
- 2. Passes equitable title, acquired after a general devise.

## DEVISE.—DISCONTINUANCE.

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- |  |        |
|--|--------|
| 1. Estate, contracted for after a general devise, will pass by a republication; and must be paid for out of the personal estate. - - - - - | X. 605 |
| 2. Equitable title, acquired after a general devise, passes by republication. - - - - -  | X. 611 |

REVOCATION.—1. } Not by mere partition: otherwise if with a  
                           2. } power of appointment.  
                           3. By mortgage in fee *pro tanto* only.

- |  |           |
|--|-----------|
| 1. Distinction as to the effect of a partition upon a devise. If the conveyance goes no farther, the devise is not revoked; as it is, if he takes the divided estate, with a power of appointment. - - - - - | X. 256    |
| 2. Ground of the distinction, as to the revocation of a devise, between a partition merely, and with the addition of a power of appointment. - - - - -   | X. 284    |
| 3. Mortgage in fee after a devise a revocation <i>pro tanto</i> only.  | XVII. 134 |

WITNESS.—1. By a mark, good.

- |  |                              |
|--|------------------------------|
| 1. Attestation of a devise by a mark, good, within the Statute of Frauds. <i>Harrison v. Harrison. Addy v. Grix.</i> | VIII. 185. 504.<br>XVII. 459 |
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### DEVISE, EXECUTORY.

*See Will.*

### DEVISE, FRAUDULENT.

*See Fraudulent Devise.*

### DEVISEE.

*See Election 7. Practice (Party 1.) Representative 14. Title-deeds 2. 3. Will.*

### DISABILITY.

*See Alien Enemy 1.*

### DISCHARGE.

*See Charge and Discharge.*

### DISCLAIMER.

- |  |          |
|--|----------|
| 1. Conclusive without a strong case on affidavit.  |          |
| 1. A defendant cannot get rid of a Disclaimer without a strong case on affidavit. <i>Seton v. Slade.</i> - - - | VII. 265 |

### DISCONTINUANCE.

*See Attorney and Solicitor (Lien 2.)*

DISCOUNT.

See *Banker* 1. *Bill of Exchange* 11. 12. 13. (*Indorsement* 1. 2.) *Creditor and Debtor* 5. *Deposit* 1. 2. *Interest* 26.

DISCOVERY.

- 1. Refused on legal title, not established, and denied.
  - 2. Of boundaries against mortgagee.
  - 3. Against Pawnee of Bailee.
  - 4. No one compelled to criminate himself.
- 
- 1. Where the bill was upon a legal title, not established at law, and denied by the Answer, discovery refused. - II. 12
  - 2. Mortgagee of an estate, partly in settlement, must discover the boundaries. - - - - - III.
  - 3. Pawnee of a Bailee must discover so as to enable the owner to bring an Action. - - - - - III.
  - 4. No person compelled to answer what has a tendency to criminate him. - - - - - XI.

COSTS.

- COSTS.—1.** Moved for after commission returned.
- 1. The proper time to move for costs of the discovery is after the commission returned. *Banbury v. —*. - IX.
- See *Account* 5. *Answer* 12. 13. *Arbitration* 13. 26. *Bankrupt* 11. 35. (*Commitment* 4.) (*Proof* 31.) *Demurrer* 4. 12. 13. 15. 20. *East India Company* 2. *Evidence* 30. (*Witness* 4. 22. 23. 24.) *Pleading* 16. 26. 31. (*Demurrer* 14. 15. 16. 22. 23. 24.) *Practice* 120. 196. 197. 333. 334.

DISHONOUR.

See *Bill of Exchange* (Notice 2. 3.)

DISSEISIN.

See *Devise* 30. *Infant* 27. *Revocation* 27.

DISSENTERS.

See *Charity* 23.

DISSENTING CHAPEL.

See *Charity* 62.

DISTRIBUTION.

- 1. *Per stirpes* and *per capita*.
  - 2. *Per capita* under bequest of one-fourth to the children of A., and one-fourth to the children of B.
  - 3. *Per capita* under a Will; though *per stirpes* by the Statute.
- 
- 1. Distribution *per stirpes* and *per capita*. *Royle v. Hamilton*. - - - - - IV.
  - 2. Bequest of one-fourth to the children of A. and one other fourth to or among the children of B. distribution *per capita*. *Lady Lincoln v. Pelham*. - - - - - X.

## DISTRIBUTION.—DONATIO MORTIS CAUSA. 225

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3. The rule of distribution *per capita* applied to a bequest to a brother and the children of a deceased brother; though under the Statute they would have taken *per stirpes*. - - - - -

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See *Annuity* (Valuation 5. 6.) *Representative* 9. *Will* 245.

### DISTRIBUTION, STATUTE OF.

See *Advancement* 1. *Executor* 73. *Representative*. *Will* 207. 251. 252. 253.

### DIVIDENDS.

See *Bankrupt* (Assignee 11.) (Proof 15.) *Stock*.

### DOMICIL.

1. Only one for succession to intestate's personal estate; regulated by the law of that place.
  2. Not from mere birth or death. Of origin, from birth and connections, remains until clearly abandoned, and another taken.
  3. Lord *Somerville's* case.
  4. Two domicils for some purposes.
  5. Distinction upon contemporary domicils, with reference to situation in life.
  6. Not acquired until *sui juris*.
- 
1. The succession to the personal estate of an Intestate is regulated by the law of that place, which was his domicil at the time of his death. For that purpose there can be but one domicil; and the *lex loci rei sitæ* does not prevail. *Somerville v. Lord Somerville*. - - -
  2. The mere place of birth or death does not constitute the domicil. The domicil of origin, which arises from birth and connections, remains; until clearly abandoned, and another taken. *Somerville v. Lord Somerville*. -
  3. In the case of Lord *Somerville*, of two acknowledged domicils, the family seat in *Scotland*, and a leasehold house in *London*, upon the circumstances the former, which was the original domicil, prevailed. *Somerville v. Lord Somerville*. - - - - -
  4. A man may have two domicils for some purposes. - -
  5. Distinction upon contemporary domicils: in the case of a nobleman or gentleman generally the domicil is the mansion-house in the country: that of a merchant is at his residence in town. - - - - -
  6. A new domicil cannot be acquired during pupillage, or until the person is *sui juris*. - - - - -

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See *Assets* 9.

### DONATIO MORTIS CAUSA.

1. Not appearing to be in the last illness, *Issue*.
2. Not by absolute gift, to take effect immediately.
3. Its true definition. In nature of a legacy.

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4. Not by mere parol : whether by deed or writing.
5. Bill on banker expressly for mourning.
1. Issue directed to try, whether there was *donatio mortis causa*; as it did not appear to have been in the last illness. *Blount v. Burrow.* - - - - - I
2. An absolute gift to take effect immediately cannot be considered as *donatio mortis causa*: therefore such a gift of a common check on a banker, payable to bearer, and of a promissory note, held not to be *donatio mortis causa* or an appointment or disposition in nature of it; and not capable of any greater effect in equity than at law: as to the check the bill was dismissed without prejudice to any Action: as to the note, it being doubted, whether an Action would lie against the Executor for want of consideration, the Court offered to retain the bill, if an account was necessary. *Tate v. Hilbert.* - II.
3. The description of *donatio mortis causa* in the *Digest*, *Tit. de mortis causa donationibus Leg. 2*, which *Swinburne* has followed, is not correct: the true definition of it is in *Lege 27*, and in *Just. Inst. Tit. 7, de donationibus*; where it appears, it has the nature of a legacy, is liable to debts, and is only a gift on survivorship. II.
4. Property not transferred by words of gift without an act. Therefore *donatio mortis causa* cannot be by mere parol: doubtful, whether it may be by deed or writing. II.
5. Bill upon a banker expressly for mourning is an appointment of the money for a particular purpose in writing, necessarily supposing death; and therefore Probate not necessary. - - - - - II.

DONATIVE.

1. Qualities of a donative. - - - - - III.

DORMANT PARTNER.

See *Bankrupt* (*Partner* 19.) *Partner* 47. 53. 54. 55. 56. 58. 59. 62. 63.

DOUBLE LEGACIES, PORTIONS, &c.

See *Legacy* 6. 9. 11. 50. 54. *Portion* 2. 4. *Satisfaction* 28. 40. 41. *Will* 133. 189. 190. 191. 192. 193.

DOUBLE SUIT.

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DOWER.

1. The right not being controverted, concurrent jurisdiction.
2. When title to arrears accrued, not decided on writ of dower.
3. No costs to plaintiff in writ.
4. Equitable bars.

## DOWER.

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6. Not barred by uncertain provision on marriage of an infant.
  8. Established under joint bankruptcy on estate purchased with the joint fund for one partner, made debtor for the money.
  7. Purchaser not protected by Term attendant, unless assigned.
  8. Where purchaser takes, not under a power, but by conveyance, as a limitation of the fee.
  9. Distinction between Terms at law, and in equity ; protecting in equity the dowress against heir or purchaser.
  10. No limitation to arrears without special ground.
  11. Implied bar under covenant.
  12. Bar by conveyance according to appointment, &c.
- 
1. If right to dower is controverted, it must be made out at law ; if not controverted, the Court of *Chancery* has a concurrent jurisdiction ; therefore where to a bill for dower and arrears since the death of the husband the defendant demurred, and by answer admitted the right and stated an offer to assign it, and an offer of the arrears since the claim, the demurrer was over-ruled. *Mundy v. Mundy.* - - - - - II. 122
  2. Question, whether a widow is entitled to arrears of dower from the death of her husband or only from her claim, cannot be decided on a Writ of dower. - - - - - II. 128
  3. No costs to plaintiff in a Writ of dower. - - - - - II. 128
  4. Writs of dower almost out of use : they can only be opposed by a legal Bar ; and formerly there could be no other : now equitable bars are in daily practice. - - - - - II. 129
  5. A provision previous to the marriage of a female infant in bar of dower, thirds, and all claim upon the personal estate of the husband, if precarious and uncertain, as, that the personal estate shall go according to the custom of *London*, does not bar her. *Smith v. Smith.* - - - - - V. 189
  6. Dower established against assignees under a joint Commission of bankruptcy upon estates purchased with the partnership fund, but conveyed to one partner under a specific agreement, that the estates should be his, and he should be debtor for the money. *Smith v. Smith.* - - - - - V. 189
  7. A purchaser cannot protect himself against a claim of dower by a term attendant upon the inheritance, unless he has procured an assignment. *Maundrell v. Maundrell.* - - - - - VII. 567. X. 246
  8. Husband having a power of appointment, paramount the right to dower, in default thereof to himself for life, remainder to his right heirs, if the power could have effect, yet a purchaser taking by a conveyance adapted to pass the interest in the estate, as a limitation of the fee, was held to take in that way, not by way of appointment, and therefore subject to dower. Upon a re-hear-



ing, the *Lord Chancellor* affirmed the order, upon the point, that a purchaser, to avail himself of an outstanding term against dower, must have procured an assignment, or at least a declaration of trust; or have got possession of the deed, creating the term. Upon the other question, though appearing not to be raised by the case, the *Lord Chancellor* expressed a clear opinion, that a general power of appointment over the whole estate may subsist in the same person, who has the fee simple. *Maundrell v. Maundrell.* - - - VI. 56'

9. At law all Terms are considered as Terms in gross; and therefore without regard to the purpose prevent a dowress from any legal benefit from recovery in dower; for she recovers with stay of execution during the Term. But equity regards the purpose, for which the Term is created and subsists; and if only for the benefit of the owner of the inheritance, it is considered part of the inheritance: not absolutely merged, but so attendant as to accompany it and every right and interest growing out of it by operation of law or agreement. Not to be used therefore against the owner of the whole or any part of the inheritance: every description of ownership having a use in the Term commensurate with the interest in the inheritance. When dower arises therefore, the Term in a proportion is as much attendant upon that interest as during the husband's life upon the inheritance; and protects it against either heir or purchaser. - - - - -
10. No limitation in equity to arrears of dower any more than at law, without a special ground. Account decreed therefore for the whole period from the death of the husband, twelve years. *Oliver v. Richardson.* -
11. Implied Bar of dower by a provision under a covenant in the marriage settlement. - - - - -
12. Conveyance to such uses as *A.* shall appoint, and for default of appointment, to him in fee, a mode used to prevent dower. - - - - -

See *Annuity* 23. *Baron and Feme (Adultery 1.) Election: Mortgage* 17. *Navigation Shares* 1. *Notice* 2. *Partition* 14. *Satisfaction* 32. *Term.*

### DOWNING COLLEGE.

See *Charity* 26.

### DRAWER OF BILL.

See *Bankrupt* 33. *Bill of Exchange (Discharge 1. 2.) Notice* 3.

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### DRURY LANE THEATRE.

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**DUPLICATE.**  
See *Will* 284. 287.

**DURESS.**

1. Compromise with a man in gaol, though at the suit of another, not to stand.
1. Compromise with a man in gaol, though not at the suit of the party, with whom it is made, not to stand. -  
See *Baron and Feme* (*Influence*, &c. 1.) *Injunction* 3. *Settlement* 1.

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**DUTCHY OF LANCASTER.**  
See *Practice* 142.

**DYING WITHOUT ISSUE.**  
See *Perpetuity* 6. 7.

**EAST INDIA COMPANY.**

1. Have no sovereignty.
2. Construction of By-law.
1. *East India* Company have neither an independent nor delegated sovereignty; but are mere subjects. - -
2. By-law of the *East India* Company, requiring a discovery by Answer to a bill in equity as to transactions, upon which penalties were imposed, confined to the case of a Bill by the Company. *Paxton v. Douglas*.  
See *Jurisdiction* 2. *Pleading* 7.

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**EAST INDIA SHIP, SALE OF COMMAND.**

1. Sale of command illegal.
1. The command of an *East India* ship is a public trust; and the sale of it, contrary to a public regulation of the Company, is a breach of public duty. - -  
See *Contract* (*Illegal* 8.) *Pleading* (*Demurrer* 26.)

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**EAST INDIES.**  
See *Infant* 12. *Receiver* 21.

**ECCLESIASTICAL COURT.**

1. Act of party vacates power.
1. Practice in the Ecclesiastical Court, that the party, coming into Court, and doing any act himself, vacates a power given to another to act for him. - - - -  
See *Baron and Feme* (*Separation* 7.) *Jurisdiction* 3. 4. 15. *Marriage* 2. *Practice* 2. *Will* 277.

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**EDUCATION.**  
See *Maintenance* 6.

## EJECTMENT.

1. By heir in tail: Defence cannot rest on judgment in Recovery: but all the proceedings must appear.
1. Upon an ejectment by an heir in tail, the defendants cannot rest upon the judgment in the Recovery: but all the proceedings must appear upon the Record. -  
*See Landlord and Tenant* 7. 19. *New Trial* 2. *Practice* 228. *Presumption* 7.

## ELECTION.

1. Of widow barred by five years' acquiescence without special ground.
2. Right to have the property cleared.
3. Not without clear intent.
4. Not *dehors* will.
5. Not on provisions of different nature.
6. Against tenant in tail of rent-charge on estate devised to him in strict settlement.
7. Compelling compensation on declaration plain or necessary inference.
8. Only on presumed intent.
9. Only on a decided interest against the will,
10. Not applicable to an appointment by will, giving no distinct fund.
11. Against legatees, disputing an appointment by the will.
12. Not without clear knowledge.
13. On devise of another's estate. Compensation.
14. Not extended to residuary legatee: nor against tenant by the curtesy after election by the tenant in tail.
15. Distinguished from express condition.
16. Claim must be under the whole instrument.
17. Interests to which it is applied.
18. Not extended to residuary legatee: nor against tenant by the curtesy after election by the tenant in tail.
19. By widow on disposition by husband of her property under erroneous conception of title.
20. By child on express condition.
21. Between claims under and against a will.
22. By tenant in tail whether binding infant issue.
23. Between claims under and against a will.
24. By child on construction of parent's will.
25. By legatee, claiming against another under the same will.
26. } On implied condition from giving another's property.
27. }
28. Not applied against creditors.
29. On implied condition, though from mistake, to give full effect to the instrument.
30. The only limits, devise not duly executed, and by infant,
31. Express, or clearly implied, operating devise.
32. Devise of another's estate after death of deviser's wife, no implication for her through election.

## ELECTION.

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33. Principle; right to compensation.
  34. Effect: whether compensation or forfeiture.
  35. Barred by acquiescence.
  36. From the Civil Law.
  37. On a deed.
  38. Distinction between deed and will with reference to compensation and forfeiture.
- 
1. Husband devised all his real and personal estates in trust for his wife for life, provided she should not marry; and made her executrix. The trustees not acting, she took possession. After receiving rents and profits for five years not allowed to elect to take a sum under marriage settlement without special ground, as that from the situation of the property it was doubtful, what would be the result. *Butricke v. Broadhurst.* - - I. 171
  2. Party, having right of election, may file a Bill to have property cleared; in order to elect to advantage. - I. 172
  3. Question, whether testator intended legatee should give up a legacy under the Will of another testator; or considered it as given up; legatee entitled to both; the intent not being sufficiently made out to compel election. *Baugh v. Read.* - - - - - I. 257
  4. Election to take under or in opposition to a Will can only be compelled upon something in the Will, not *dehors*. *Stratton v. Best.* - - - - - I. 285
  5. Wife entitled under bond by the husband upon the marriage to a sum payable three months after his death for her for life, then for the children; if none, for her absolutely: by Will he gave all real and personal estate he then had, or might die possessed of, upon trust to pay her the rents and interest for life; then the whole equally to the children; if none, over; and revoked all former Settlements and Wills. There were no children. Widow entitled to both. *Forsight v. Grant.* - - I. 298
  6. Tenant in tail of a rent-charge under Settlement, being also devisee in strict settlement of the estate charged with it, put to Election. *Blake v. Bunbury.* - - I. 514
  7. Devisee cannot disappoint the Will, even if it disposes of his property: but must either convey according to the devise, or renounce the benefit of it *pro tanto*: so, if he is an incumbrancer upon an estate directed by the Will to go free from incumbrance, he must elect: but the intent must appear by declaration plain or necessary inference. - - - - - I. 523
  8. Election never but upon presumed intent. - - - I. 557
  9. Election can only exist, where a person has a decided interest, and something is left him by Will. - - - I. 561
  10. Parties taking under a Will, executing a power of appointment, dispute part of it: there being no fund but that to be appointed, it is not a case of Election. *Bristow v. Warde.* - - - - - II. 336

11. Testator appoints to grand-children under a power to appoint to children a fund, to go in default of appointment equally : the appointment being bad, the children, having legacies, must elect. *Whistler v. Webster.* -
12. No person bound to elect without a clear knowledge of the funds. - - - - -
13. Testator disposes of the estate of another, who has some interest under the will : he shall not take that, unless he gives up his estate to that amount. - - - - -
14. *A.* tenant in tail with power to lease, remainder to *B.* wife of *C.* in tail, conceiving himself to have obtained the fee under a void execution of a power, made leases exceeding his power; reciting, that he was seised of the freehold and inheritance, and covenanting for quiet enjoyment against any act or default of himself or those claiming under him : *A.* by Will devised the said estates and others to *B.* for life ; remainder to trustees to preserve contingent remainders ; remainder to her first and other sons in tail male ; remainder to her daughter and her first and other sons, and to *D.* and his first and other sons, successively in the same manner ; and gave to *B.* and *C.* certain interests in his personal estate ; and gave the residue to *D.* ; who filed a bill to have the Will established : *B.* elected to take her estate tail in opposition to the Will ; which the Master reported to be for her benefit : after her death *C.*, who had taken under the Will, claimed as tenant by the curtesy ; and brought Ejectments against the lessees, some of whom had expended considerable sums on their tenements : neither the lessees nor *D.* are entitled to stop the ejectments, or to put *C.* to his Election : but an Injunction was granted on their undertaking to bring on their causes the following Term. *Lady Cavan v. Pulteney.* (See No. 18.) - - - - -
15. The equity to compel Election distinguished from an express condition. - - - - -
16. Party claiming under an instrument must claim under the whole. - - - - -
17. Election applies to interests of married women, interests immediate, remote, contingent, of value or not of value, real or personal. - - - - -
18. See No. 14 : Upon the Bills by *D.* and the lessees, the *Lord Chancellor* was of opinion as to the form of *D.*'s Bill, there was great weight in the objection, that the whole was arranged in the former cause ; and if there was any omission in the decree, that was not the subject of an original bill : As to the merits, that though the assets of *A.* would be liable to the lessees upon eviction, the benefit of putting a party to Election does not extend to a residuary legatee ; and that neither *D.*, as a disappointed devisee, nor *à fortiori* the lessees, could

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raise that equity against *C.* holding as tenant by the curtesy under the Election, that *B.* had made, to take her estate tail against the will of *A.* The bill of *D.* therefore was dismissed; and that of the lessees retained, in order that, when they should have ascertained their damages, they might have satisfaction from the assets of *A.*; part of which had been received under his Will by *C.* *Earl of Darlington v. Pulteney.*  
*Lady Cavan v. Pulteney.* - - - - -

III. 384

19. Where a testator, conceiving himself entitled to the property of another person, makes a general disposition of all his estate, and gives some benefit to that person, he must elect. Therefore a husband, conceiving himself entitled under a void deed to a residue bequeathed to his wife, and dying without getting possession, having made such a general disposition by a Will, under which she took an interest, it is a case of Election; and her Election to take the provision under the Will, which, though less in point of value, was to her separate use, was established against the assignees under the bankruptcy of her second husband. *Rutter v. Maclean.* -

IV. 531

20. Testator made a provision for his wife; and gave a sum of money in trust for the separate use of a daughter, and after her death to divide the principal equally between her children and their issue at twenty-one; if none such, to his son; whom he made residuary legatee. Then after similar, but unequal, provisions for his other children, he declared, that the provision in the Will for his said wife and their said children was in satisfaction of all right, claim, &c. which she, or they, or any or either of them, could set up, &c.; or which she and they would be entitled to under his marriage Articles; and if his said wife and children or either of them should refuse, &c. he revoked the legacy and bequest therein contained, to the use and benefit of such one or more of them, his said wife or children, who should refuse or decline to execute such release or discharge; and declared the same void as to such one or more of them, who should so refuse; as though he had died intestate. A child electing to take under the Articles forfeits the life interest; which falls into the residue: but the children of such child are not bound by the Election; and liberty was given to apply on the death of the parent. *Ward v. Baugh.* - - - - -

IV. 623

21. Parties having claims under and against a Will must elect. *Wollen v. Tanner.* - - - - -

V. 218

22. Whether the infant issue of tenant in tail was bound by the Election of his parent, *quære.* *Long v. Long.* -

V. 445

23. Election decreed between two claims under and against a Will. *Blount v. Bestland.* - - - - -

V. 515

24. In a case both of Election and satisfaction by the Will

	of a parent, as to two subjects of claim by his younger children, under a Settlement, a case of Election was raised as to a third subject, Stock vested in trustees, upon the construction of the Will. <i>Pole v. Lord Somers.</i>	Vol. VI.
25.	Election, where one legatee insists upon something, by which he would deprive another legatee under the same Will of the benefit, to which he would be entitled, if the former permitted the whole Will to operate. -	IX.
26.	Election, where testator gives what belongs, not to him, but to another; to whom he gives some estate of his own; upon an implied condition, that the other shall part with his own estate, or not take the bounty. -	X.
27.	Election upon a Will, disposing of the estate of another, and giving an estate to him; upon an implied condition, that he shall permit the Will to take effect. - -	X.
28.	The doctrine of Election not applicable against creditors, taking the benefit of a devise for debts, and also enforcing their legal right against other funds disposed of by the Will. <i>Kidney v. Coussmaker.</i> - - -	XII.
29.	Election. A person shall not claim an interest under an instrument without giving full effect to it; as far as he can, renouncing any right or property, which would defeat the disposition. The ground is the implied condition, upon intention; though from mistake. - -	XIII.
30.	The only instances of limiting the principle of Election are an attempt to devise by a Will, not duly executed: secondly, an attempt to devise by an infant. - -	XIII.
31.	Devise by raising a case of Election, expressly or by clear implication. - - - - -	XVIII.
32.	Devise to the heir after the death of the devisor's wife: a necessary implication, that the wife shall take for life: but no implication for her upon a devise of another man's estate after her death, through the medium of Election. - - - - -	XVIII.
33.	Principle of Election; giving a right, not to the thing itself, but compensation out of something else. -	XVIII.
34.	As to the effect of Election against the Will, whether compensation or forfeiture, <i>quære (a).</i> <i>Tibbits v. Tibbits.</i>	XIX.
35.	Right of Election barred by acquiescence. - - -	XIX. 6
36.	Origin of Election in the <i>Civil</i> law. - - -	XIX.
37.	Election upon a Deed. <i>Green v. Green.</i> - - -	XIX.
38.	Distinction upon Election between a Deed and a Will. Whether in the latter case the principle is forfeiture or compensation only, <i>quære (b)</i> : but upon Election against a marriage Settlement, as operating a contract, an Injunction was granted on the principle of forfeiture. <i>Green v. Green.</i> - - - - -	XIX.

(a) Since decided to be compensation. See the note, Vol. XIX. page 664.

(b) Since decided to be compensation. See the note, Vol. XIX. page 664.



DOWER.—HEIR.—LAW AND EQUITY.

- DOWER.**—1. Subject to Election; though great disproportion.  
Not barred by taking three years under the Will.  
2. } Not subject to Election, unless inconsistent with  
3. } the Will.  
4. Election under lapsed devise with express bar of dower.  
5. Not subject to Election, unless inconsistent with the Will.  
6. Election under mistake not binding.

1. Widow put to Election to take under the Will of her husband or dower notwithstanding great disproportion. Receipt of a legacy and annuity under the Will for three years did not prevent her right of Election; being presumed not to have acted with full knowledge; which would bind her. *Wake v. Wake.* - - - - -

I. 335

2. A widow cannot be put to Election to take under the Will of her husband or her dower except by express declaration or necessary inference from the inconsistency of her claim with the dispositions of the Will. *French v. Davies.* - - - - -

II. 572

3. To compel a widow to elect to take under a Will or dower, her claim to dower must be inconsistent with the Will. *Strahan v. Sutton.* - - - - -

III. 249

4. Devisee dies in the life of the devisor; and the estate descends: the devisor's widow, being entitled by the Will to a provision in bar of dower, must elect. -

III. 337

5. A widow not put to Election between her dower and an annuity by the Will of her husband. For that the claim of dower must be inconsistent with the Will. *Greator v. Cary.* - - - - -

VI. 615

6. Widow not bound by Election made under a mistaken impression of the extent of the claim against her. *Kidney v. Coussmaker.* - - - - -

XII. 136

- HEIR.**—1. Subject to Election by express condition.  
2. Claiming copyhold against the Will.  
3. No Election on devise not duly executed without express condition.  
4. To elect only on distinct intention. Whether *dehors*.  
5. Election on contracts directed to be executed and conveyed to the uses of the Will.  
6. Election under words of recommendation.

1. Land devised by Will not duly executed: the heir, having a legacy upon express condition not to disappoint the Will, must elect. - - - - -

II. 371

2. The heir claiming under a Will, and against it a copyhold estate unsurrendered, put to his Election. *Pettibard v. Prescott.* - - - - -

VII. 540

3. No Election against an heir at law, claiming under a Will, and also against it a real estate, for want of a due exe-

cution according to the Statute, unless an express condition. *Sheddon v. Goodrich.* - - - - -

VI

4. General rule, that, to put an heir to Election, the intention must distinctly appear. Whether it may be shewn from circumstances *dehors, quære.* - - - - -

XI

5. Will, directing, that, in case the testator shall enter into contracts for the purchase of lands, and die before the conveyance, such contracts shall be carried into execution, and the money paid out of his personal estate, and the conveyance be to his trustees, their heirs, &c. to the uses of his Will. The heir at law, having interests bequeathed to him, put to Election. *Thellusson v. Woodford.* - - - - -

X

6. Devise to a son, recommending him to continue his cousins, *A.* and *B.*, in the occupation of their respective farms, in the county of *W.* as heretofore, and so long as they continue to manage the same in a good and husbandlike manner, and to duly pay their rents. A trust for the cousins, who had been tenants at will; and the son, being the heir, was put to his Election. *Tibbits v. Tibbits.* - - - - -

X

**LAW AND EQUITY.**—1. Plaintiff for relief, part of which only can be had at law, not entitled to elect.

1. Plaintiff, suing for equitable relief, part of which only could be had at law, not entitled to elect; but can proceed at law only by leave of the Court. A Receiver, appointed at his instance, who, though his officer, ought, as indifferent, to restrain him, not aided by an order for liberty to distrain without his undertaking to proceed no farther at law. *Mills v. Fry.* - - -

X

See Account 2. 4. (*Mesne Profits* 2.) *Bankrupt* 14. *Baron and Feme* 7. 45. *Condition* 8. *Copyhold* (*Surrender* 9.) *Devise* 1. 4. *Frauds, Statute of*, 11. *Infant* 5. 6. *Laches* 16. *Partner* 58. *Portion. Satisfaction* 9. *Will* 45. 85. 97. 230.

### ELECTION OF CURATE AND VICAR.

1. } Under purchase for the parishioners and inhabitants.  
2. }

3. Popular under limited words.

1. Purchase of the impropriate rectory of *Clerkenwell* for the use of the parishioners and inhabitants. The nomination of the curate had been by Decree declared to be in the parishioners and inhabitants, paying to church and poor. The *Lord Chancellor* expressed an opinion, that assessment gave the right; though actual payment had not been made: but an election on that principle was not disturbed on the ground of common consent; no objection having been made at a general meeting; and the parish having no representative meet-

## ELECTION OF CURATE, &c.—ENROLMENT, &c. 207

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ing in vestry for this purpose. *Attorney-General v. Forster.* (See No. 2.) - - - - -

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2. See No. 1. Whether the qualification in the Decree is satisfied by assessment only, not followed by actual payment, or not, an election on that principle was established upon common consent to that among other regulations; a case of strong and high probability being required for an issue or inquiry; and, the Court declining to give prospective directions as to the future, the Information and Bill was dismissed; and with costs; except as to the keeping up the number of trustees, with reference to the only proper subject of the Information, the stipend of the curate: all the rest, as to the nomination, &c. being the subject of a private suit. An informality in the Bill, not stating the plaintiffs as suing on behalf of all the other parishioners, might have been cured by amendment. *The Attorney-General v. Newcombe.* - - - - -

XIV. 1

3. Trust of an advowson to present some fit person, such as the inhabitants and parishioners or the major part of the chiefest and discreetest of them should nominate. The right of election in the inhabitants, paying the church and poor rates, above the age of twenty-one. A popular election by a majority of such voters, and others, not so qualified, was established. *Fearon v. Webb.* - - - - -

XIV. 13

## ELECTION TO SUE AT LAW OR IN EQUITY.

See *Bankrupt. Election. Practice* 14.

## ELEEMOSYNARY CORPORATION.

See *Charity* 72. 73.

## EMBEZZLEMENT.

See *Lien* 27.

## EMIGRANT.

See *Ne exeat Regno* 1.

## ENABLING STATUTE.

See *Lease* 1.

## ENEMY.

1. Commission to examine in enemy's country.

1. Commission to examine witnesses in an enemy's country. *Cahill v. Shepherd.* - - - - -

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See *Alien (Enemy)* 5.)

## ENROLMENT.

See *Registry* 2.

## ENROLMENT OF DECREE.

See *Laches* 17.

## 238 EQUITABLE ASSETS.—EQUITABLE RECOVERY

### EQUITABLE ASSETS.

See *Assets* 16. 20. *Will* 56.

### EQUITABLE ESTATE.

See *Equitable Recovery* 3. 8. 9. 10. *Merger* 2. *Purchase* 1. *Trust* 30. 31. 32.

### EQUITABLE INTEREST.

1. Bound by contract as legal estate.
2. In land to be purchased, or money to be produced by sale.
1. Conveyance to trustees, in trust to sell, and purchase other estates, to be settled. Those, entitled under the limitations directed of the estates to be purchased, have equitable interests co-extensive until a sale. Therefore a specific performance was decreed of an agreement for partition against an objection to a title under a Fine by a person, who would have been tenant in tail of the estates to be purchased; the effect being an election to keep the estate; binding the trustees; though it may be questionable, whether they could take upon themselves to convey in fee to a person, entitled to an estate tail only. *Pearson v. Lane.* - - - - - XVI
2. Money, given to be laid out in land, to be conveyed, or land to be sold, and the produce paid, to A.; though in the one case the money is not given to him, and in the other no interest expressly in the land, he is in equity the owner, and may elect to have the money, or the land conveyed, as he shall direct. - - - - - XVI

See *Assignment.* *Insolvent Act* 1. *Insurable Interest* 1. *Trust* 12. *Will* 7. 9. 10. 23. (*Executory Devise* 1. 2.)

### EQUITABLE JURISDICTION.

See *Bankrupt* (*Usury* 1.) *Jurisdiction* 34.

### EQUITABLE LIEN.

See *Deposit.* *Fraud* 49. *Mortgage* (*Equitable.*) *Will* 10.

### EQUITABLE MORTGAGE.

See *Bankrupt.* *Lien* 12. 13. *Mortgage.*

### EQUITABLE RECOVERY.

1. Will not bar a legal estate.
2. Legal estate in equitable tenant to the *præcipe* no objection.
3. By equitable tenant for life making a tenant to the *præcipe*.
4. Analogy to legal.
5. Comprehensive words prevail against inference from acts under misconception.
6. Though tenant in tail not in actual receipt of the rents.
7. Distinguished from legal with reference to possession.

**EQUITABLE RECOVERY.—EQUITABLE REMAINDER. 239**

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8. } Bars equitable estates, and remainders, though united		
9. } with the legal fee in trust to secure the limitations.		
10. When only equitable interests between the legal estate and ulterior equitable interest.		
1. An equitable Recovery will not bar a legal estate.	III.	125
2. A legal estate in the equitable tenant to the <i>Præcipe</i> is no objection to an equitable recovery.	III.	126
3. Devise to trustees and their heirs in trust to receive and pay over rents and profits to <i>A.</i> , a <i>fême covert</i> , for life, for her separate use; and after her decease to convey to her daughters, as tenants in common in tail; remainder over: <i>A.</i> takes an equitable estate for life; and may by lease and release make a tenant to the <i>Præcipe</i> for an equitable Recovery: each daughter takes a vested estate, when she comes <i>in esse</i> ; subject to be divested, as the number increases: the conveyance in execution of the trust need not wait the death of <i>A.</i> <i>Burnaby v. Griffin.</i>	III.	266
4. Analogy between legal and equitable Recoveries.	III.	276
5. Estates comprised in an equitable Recovery: the words being sufficiently comprehensive, notwithstanding an inference against the possession of the party and his intention to include them from acts done under a misconception of his title. <i>Pigott v. Waller.</i>	VI.	98
6. Equitable Recovery valid; though the tenant in tail was not at the time in actual receipt of the rents; which the trustee paid over to others under a Decree, afterwards reversed. <i>Lord v. Grenville v. Blyth.</i>	XVI.	224
7. No analogy between legal and equitable Recovery with reference to possession with or adverse to the title. To make a legal Tenant to the <i>Præcipe</i> possession by seisin in fact or law is absolutely necessary: otherwise no legal freehold is acquired: but in the other case, as it is not the object, nor can ever be the effect, of the conveyance to transfer the possession, but only to pass the equitable interest, if he has a sufficient equitable interest, viz. an equitable estate tail, the Recovery is well suffered.	XVI.	230
8. Equitable estates barred by equitable Recovery, if there is an equitable Tenant to the <i>Præcipe</i> .	XVIII.	418
9. Equitable estate in remainder, though united with the legal fee, in trust to secure the limitations, barred by an equitable Recovery.	XVIII.	418
10. Equitable Recovery, when nothing but equitable interests interposed between the legal estate and the ulterior equitable interest.	XVIII.	419

See *Power* 1. *Trust* 31.

**EQUITABLE REMAINDER.**

See *Trust* 31.

## EQUITABLE SET-OFF.—ESTATE.

## EQUITABLE SET-OFF.

See *Set-off*.

## EQUITABLE WASTE.

See *Injunction* 19. 22. *Waste* 32. 34.

## EQUITY, COURT OF.

See *Evidence* 10. *Jurisdiction*. *Power* 20.

## EQUITY OF FEME COVERT.

See *Baron and Feme*.

## EQUITY OF REDEMPTION.

See *Assets* 16. *Laches* 5. *Mortgage*.

## ERRONEOUS DESCRIPTION.

See *Legacy* 58. 59. 61.

## ERROR.

1. Distinction on staying execution in civil and criminal cases.

1. Writ of Error generally stays execution in civil cases : not in criminal. *Huguenin v. Baseley*. - - -

See *Account (Settled.)* *Bankrupt* 20. *Bill of Review* 1. *Mistake*. *Practice* 183. *Review* 2. 3. *Tenant in Tail* 2.

## ESCAPE.

See *Bankrupt (Privilege)* 3.)

## ESCHEAT.

1. To the Crown against trustee not having the legal estate.
2. Leave to traverse the inquisition.
3. Lease by the Crown to party discovering.
1. Trustee, not having the legal estate, cannot hold against the Crown claiming by escheat. *Walker v. Denne*. -
2. Order upon petition for leave to traverse an inquisition upon a commission of escheat, found in favor of the Crown. *Ex parte Webster*. - - -
3. The ordinary rule for the Crown to give a lease to the party discovering an escheat. - - -

See *Copyhold* 1. *Trust* 39. *Will* 48.

## ESCHEATOR.

See *Lunacy* 72.

## ESCROW.

See *Bond*.

## ESTATE.

CONVERSION.—FOR LIFE.—FOR YEARS.—IN FEE SIMPLE.—  
PUR AUTER VIE.—REAL.—TAIL.

- CONVERSION.—1. Of real estate out and out.  
2. Fails with the purpose.

- CONVERSION.—3. Under contract by relation ; though depending on contingency.
4. By purchase with partnership fund.
5. Estate of infant first taker, having paid debts, reimbursed under a charge.
6. Under direction to lay out in land.
7. } Under devise, or contract, not executed ; un-
8. } less intention to alter the uses.
9. }
10. Not completed.
11. Under option to purchase, when made.
12. Of real estate to personal, for partial purposes, a resulting trust of the surplus for the heir ; but as personal.
13. For limited purpose : resulting trust.
14. For all purposes of the Will : not for next of kin on lapse.
15. Not for disposition of real estate by unattested codicil.
16. For the purpose appointment a resulting trust in default.
17. Out and out ; and no option to an infant.
18. No conversion on construction of a settlement.
19. Prevented by slight declaration of competent owner.
20. The period, as between tenant for life and remainder-man, ascertained by rule, not discretion.
21. Option to prevent it.
22. General, for all debts.

1. Upon the construction of a Deed for the purpose of a partnership, real estate held to be converted out and out into personal. *Ripley v. Waterworth.* - - -
2. General principle, that, where a person, dealing upon his own property only, has directed a conversion for a particular purpose, when the purpose fails, the intention fails ; and this Court regards him as not having directed the conversion. - - - - -
3. Property held converted under the effect of a contract by relation ; though the actual conversion depended on a contingency, not in the option of the owner ; and did not take place during his life. - - - - -
4. Real estate, purchased with a partnership fund, held to have descended to the heir against the claim of the residuary legatee. *Ripley v. Waterworth.* - - -
5. Debts, charged upon an estate, paid out of the estate of the first taker, an infant : the infant's estate reimbursed by a charge ; though the securities had been cancelled.
6. Money, under a direction to be laid out in land, considered as real estate under a general disposition by the Will of a person, entitled to it absolutely in either shape, of " the money and land," in the absence of

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intention: the word "money" being answered by another fund of Stock. *Biddulph v. Biddulph.* - -

XI

7. Land, under a devise in trust to be sold, not considered as real estate: the trust not being executed; but no act done, shewing an intention to alter the character, impressed by the uses of the Will. An objection to the title of the heir upon that point prevailed. *Kirkman v. Miles.* - - - - -

XII

8. Stock, taken by the heir as real estate under a trust to lay it out in land, not executed, considered as personal estate in him, under circumstances, shewing his conception and intention to treat and dispose of it as personal property. *Triquet v. Thornton.* - - -

XII

9. What is agreed to be done considered as done; as money under contract to be laid out in land, &c. - - -

XII

10. Stock, produced by a sale of real estate under the *London Dock Act* (39 & 40 Geo. 3. c. 47), subject to jointure, considered as real estate: the original character not having been displaced by a complete conversion. *Shard v. Shard.* - - - - -

XIV

11. Option to a tenant to purchase. The rents, until the option made, belong to the heir: from that time the conversion takes place; and the purchase-money belongs to the personal representative. *Townley v. Bedwell.* - - - - -

XIV

12. Devise of real estate in trust to sell: if a conversion to personal property, not absolutely, but for partial purposes, as the payment of debts, a resulting trust as to the surplus for the heir; but as personal property. *Wright v. Wright.* - - - - -

XV

13. Conversion directed by Will of real estate into personal, not to all intents, but for the purpose only of answering legacies and annuities: subject to that as to the real estate a resulting trust for the heir; which cannot be affected by an unattested codicil, bequeathing a lapsed share of the residue. *Hooper v. Goodwin.* - - -

XVII

14. Conversion of real estate into personal complete for all the purposes of the Will; not for the next of kin in case of lapse. - - - - -

XVII

15. Real estate cannot be converted into personal by Will so as to enable the testator to make a direct disposition of it by an unattested codicil. - - - - -

XVII

16. Copyhold conveyed on trust to sell: the money to be deemed part of his personal estate, and in trust for such uses as he should by Deed or Will appoint; and in default for his right heir. A Will, executed on the same day, but not referring to the Deed, directing a sale of particular property, and disposing of the personal estate in general terms, held not applicable to the estate, conveyed by the Deed; which went to the heir; no use being by the subsequent instrument de-

- clared; if the estate was converted. *Lowes v. Hackward.* - - - - - XVIII. 168
17. Real estate converted into personal out and out under a trust to sell, for the payment of debts, and to pay the residue to the grantor, his executors, &c.; and falling, thus impressed with the character of money, to one, who died an infant, incompetent therefore to elect to have it re-converted, passed to his administratrix. *Van v. Barnett.* - - - - - XIX. 102
18. Money, charged on land, by articles on marriage to be laid out on Government security or freehold estate in a particular situation, with consent of the wife, to be settled upon trust for her separate use for life; and after her death to be conveyed or assigned to her husband, his heirs, or executors; if she survive, for the issue, if more than one, subject to her appointment by Deed or Will, equally, at twenty-one, their heirs, if land, their executors, if money: if no issue, subject to her appointment, and in default to his, or her, next of kin, their heirs or executors. After the husband's death, having disposed of his personal estate by Will, this property held personal; to the interest of which his widow was entitled for life, with power of appointment by implication in the event of an only child dead under age and intestate; and liberty to apply. *Van v. Barnett.* - - - - - XIX. 102
19. A very slight declaration, by a competent proprietor of money, directed to be laid out in land, will take from it the character, so impressed on it by the instrument. XIX. 109
20. Devise in trust to sell, in such manner and at such time as the trustees shall think proper. The period of conversion, as between those entitled for life and in remainder, depends, not upon an arbitrary discretion, nor even a sound discretion in each case, but upon some fixed rule, ascertaining a given period; as upon a trust to sell with all convenient speed; controlled in this instance by consent. *Walker v. Shore.* - - - XIX. 387
21. Option of the parties, interested in money to be produced by the sale of land, to keep the land. - - - XIX. 392
22. Testator gave all his real and personal estate to his executors, in trust to pay legacies; and, after a particular disposition, gave the residue of his property in trust for his next of kin; directing his executors to pay any debts upon any evidence they think proper, except the claims mentioned in the margin: a general conversion into a mixed fund, applicable to all debts, none being mentioned in the margin, on evidence satisfactory to the executors, although not strictly legal. *Mildred v. Robinson.* - - - - - XIX. 585
- For LIFE.—1. Only to keep down interest.  
2. No property in underwood until possession.

**FOR LIFE.—3.** No right to underwood, or, if without impeachment of waste, to timber, severed during a prior estate.

4. Possession on consent and security.

5. Under devise of copyhold, specifying no interest.

6. Distinction between devise, and bequest of personal property: the former requiring words to enlarge, the latter to restrain, the interest.

7. Bequest of the produce passes the whole fund; not for life only.

8. Estate for life and in fee to the same person.

1. Tenant for life is only to keep down the interest of an incumbrance; but not to be charged with any part of the principal. - - - - -

2. Tenant for life has no property in the underwood, till his estate comes into possession; therefore cannot have an account of what was cut wrongfully by a preceding tenant. *Pigot v. Bullock.* - - - - -

3. Tenant for life without impeachment of waste cannot maintain trover for timber severed during a prior estate: but it vests immediately in the owner of the inheritance. Tenant for life impeachable is in the same case as to underwood. - - - - -

4. Tenant for life let into possession on consent, and giving security to pay charges payable out of rents and profits, and to keep down interest of the fund to answer contingent charges. *Blake v. Bunbury.* - - - - -

5. Devise of "my copyhold estate at *P.* consisting of three "tenements, and now under lease," &c.: but not specifying for what interest: an estate for life only passes. *Pettiward v. Prescott.* - - - - -

6. In a devise of real estate words of limitation required to give more than an estate for life; as are words of qualification to restrain the extent and duration of the interest in personal property. - - - - -

7. Bequest of the produce of a fund is a gift of that produce in perpetuity, and consequently of the fund itself; unless not the intention on the face of the Will. - - - - -

8. Intention extremely improbable to give the same person first the estate for life, and afterwards the fee: but that is often the legal effect, whatever may be the intention; and the limitations may be so consistent as to carry the fee, and not so uncertain as to let in the heir. - - - - -

**FOR YEARS.—1.** Statute protection from Recovery.

1. Leases for years protected by statute 21 *Hen. 8. c. 15*, from the operation of a Recovery. - - - - -

**INFEE SIMPLE.—1.** Limitation for life and then to his heirs.

1. Limitation to a man for life and then to his heirs at law, is a fee-simple. - - - - -

V

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XII

- PUR AUTER VIE.**—1. Interest *quasi* in tail disposable by deed.  
 2. Limited in tail.  
 3. To executors goes with the personal property.  
 4. On death of tenant goes to his lessee for years.

1. An interest in an estate *pur auter vie*, that would be an estate tail, if applied to freehold lands of inheritance, may be disposed of by Deed. - - - - -

VI. 158

2. An estate *pur auter vie* may be limited in tail. - - -

VI. 158

3. The interest in an estate *pur auter vie* to a man, his executors, administrators, and assigns, beyond the debts, belongs to those, who are entitled to the personal estate. The Executor was therefore held a trustee for the residuary legatees. *Ripley v. Waterworth*. - - -

VII. 425

4. Tenant *pur auter vie* made a lease for years; and died during that lease, living the *Cestui que vie*. The lessee for years would take the estate itself. - - -

VII. 442

**REAL.**—1. Held by title: possession not even *primâ facie* evidence.

1. Distinction between land and a personal chattel: the latter held by possession; the former by title; of which possession is not even *primâ facie* evidence. - - -

XIII. 119

**IN TAIL.**—1. Originally an estate on condition.

2. No *formedon* for issue in life of tenant in tail.

3. Under devise to A. and his first and other sons, and in default of male issue to his eldest and other daughter and their heirs male for ever. Tail male.

4. *Quasi* of estate for lives barred by release.

5. } On general failure of issue.  
 6. }

7. Indefinite failure the necessary construction of devise over on death without issue.

8. Absolute interest in leasehold under limitation in tail.

9. Absolute interest of first tenant in tail in personal property bequeathed as heir-looms with the real estate.

10. Under limitation to such heir of her body as should be living at her death, and in default of such over.

1. Originally an estate tail was an estate upon condition; to become a fee upon issue had, for the purpose of alienation: but not absolutely; as, if not aliened, it descended *per formam doni*. - - - - -

XV. 137

2. No *formedon* for the issue in the life of tenant in tail. -

XV. 137

3. Devise to A. and after his death to his first and other sons, and in default of male issue then unto his eldest and other daughters, and to their heirs male for ever. An estate in tail male in A. *Wight v. Leigh*. - - -

XV. 564

- Vc
4. *Quasi* in tail of an estate for lives barred by Release. - XV
  5. Residuary trust by will to apply the rents and profits for *A.* during his life, and afterwards for the heirs of his body, if any; and in default of such issue over, an estate tail in the real estate: and the absolute interest in the personal. *Elton v. Eason.* - - - - - XL
  6. Devise to the use of the devisor's second son, *A.* for life without impeachment of waste, and from and after his decease to the heirs of his body, to take as tenants in common and not as joint-tenants; and in case of his decease without issue to the devisor's eldest son *B.*, his heirs, &c.; and in case both sons should die before twenty-one, over: an estate tail in the land, and the absolute interest in personalty, bequeathed with it. *Bennett v. Earl of Tankerville.* - - - - - XII
  7. Necessary construction of a devise over upon death without issue an indefinite failure of issue; and the intention of preferring all the issue to the remainder-man cannot be effectuated in any other way than by an estate tail. XII
  8. Devise to *A.* for life: remainder to trustees to preserve contingent remainders: remainder to the heirs of his body, with remainders over for life, and in tail male; declaring, that the respective devises to *A.* &c. "and" "to their respective heirs male," are on condition of taking the testator's name; the residue of the personal property bequeathed to *A.* on attaining the age of twenty-four; to go over, if he died under twenty-four without leaving any child or children living at, or born in due time after, his death. Codicil giving an after-purchased leasehold for years for such estate and estates and in such manner and form as the real estates are devised by the Will; and with, under, and subject to, the like limitations, trusts, conditions, &c. *A.* takes an estate tail in the freehold, and the absolute interest in the leasehold, estates. *Browncker v. Bagot.* - XII
  9. Right of the first tenant in tail to the absolute interest in personal property bequeathed to go as heir-looms with real estate. - - - - - XII
  10. Estate with furniture of the house limited to *A.* and such heir of her body as should be living at her death, and in default of such remainder over; an estate tail; and consequently the absolute interest in the furniture. - XII

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### ESTATE, EQUITABLE.

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### ESTATE IN COMMON.

See *Partition* 1.

### ESTATE, PERSONAL.

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2. Affidavits against the answer for injunction against verdict by fraud.
3. Answer not evidence against other defendants.
4. Agreement, different from the bill, proved by one witness: two defendants stating one different from both.
5. No decree on one witness against answer.
6. To the intention of a settlement refused.
7. On legacy to Mrs. G.
8. Of incontinence of legatee, described as testator's "chaste wife," not admitted.
9. Impeaching appointment by will regularly proved rejected.
10. One witness, unless supported by circumstances, cannot prevail against a positive denial by answer.
11. Schedule subsequent to the will.
12. On presumption of satisfaction.
13. On equities out of presumptions: as between next of kin and executor.
14. Distinction as to a notary public and colonial magistrate.
15. Whether will thirty years old proves itself as a deed.
16. } No decree on one witness against a positive denial by
17. } answer, unless outweighed by circumstances; on
18. } which defendant may have an issue.
19. Affidavit required of no settlement or agreement as to an interest to the separate use.
20. To a fact not in issue not read.
21. Not read may be received by the Master.
22. } No decree on one witness against denial by answer,
23. } unless not positive, or outweighed by circumstances.
24. Answer not evidence against another defendant: whether of a mere trustee.

25. Examination *de bene esse* granted, beyond the three general cases.]
26. Discretion of Commissioners.
27. Publication enlarged on special case.
28. Reading depositions at law.
29. After examination *de bene esse* examination of another witness.
30. The whole answer to a bill of discovery read at law.
31. } Depositions suppressed.
32. }
33. }
34. }
35. Extrinsic as to a will.
36. Forgery not conclusive.
37. *Fleet* Register as a declaration upon the fact.
38. Duplicate of Register under the Canon Law.
39. Not to alter a will.
40. *Dehors* as to consideration, &c.; not contradicting the deed.
41. Cross-examination as to execution of deed.
42. *Vivâ voce* in Chancery.
43. Re-examination not of course.
44. Of co-defendant, after decree, who had been examined and cross-examined, limited.
45. Of party on Interrogatories settled by the Master.
46. Of sealing and delivering instrument, required to be under hand and seal, not sufficient.
47. One witness, not corroborated, not sufficient against positive denial by answer.
48. Copy from books of the Bank not sufficient upon the question whether the signature is genuine.
49. Copy of Register.
50. One witness cannot prevail against the answer, unless confirmed.
51. Answer read as evidence; not to discredit it.
52. At law the whole answer read.
53. Register, not kept according to the *Canon*.
54. Register: a leaf lost.
55. Object of taking it in secret.
56. Entries in bankers' books, not communicated, for, not against, the customer.
57. Distinction on affidavit before Justice of Peace, and Judge, in *Scotland*.
58. Improperly rejected: no new trial, if the Court satisfied.
59. Against denial of attestation by all the witnesses.
60. Second commission abroad, defendant not having had opportunity to cross-examine, qualified.
61. Duty of Commissioners.
62. { Practice of supplying Interrogatories from time to
63. { time: formerly all prepared before commission
64. { opened.
64. Second commission, defendant not having Interrogatories prepared, discretionary.



65. *In perpetuam memoriam* not published in life of witness. Exception.
66. *In perpetuam memoriam* distinguished from *de bene esse*.
67. To points not in issue of no effect.
68. Examination *de bene esse* granted on bill to perpetuate before appearance of infant defendant under circumstances, and qualified.
69. Examination *de bene esse* not extended to a prisoner for capital felony.
1. Probate of Will in the Ecclesiastical Court sufficient, as far as it goes: farther proof, if necessary, may be proceeded on in this Court. I. 54
2. Injunction Bill charging fraud in obtaining verdict: affidavits contradicting the Answer read in support of the Injunction on the merits. *Isaac v. Humpage* (a). I. 427
3. Answer of one defendant not evidence against the rest. *Jones v. Turberville*. II. 11
4. Bill for specific performance of a parol agreement to renew; plaintiff having built a house: the only witness for the plaintiff having proved an agreement different from that in the Bill, two defendants by answer stated an agreement different from both: in strictness the Bill ought to be dismissed: but specific performance was decreed according to the Answers, with costs against the plaintiff. *Mortimer v. Orchard*. II. 243
5. Plaintiff cannot have a decree on the testimony of one witness contradicted by the Answer of one defendant. II. 244
6. Evidence to prove the intention of the parties to a Settlement refused. *Brydges v. The Duchess of Chandos*. II. 417
7. Legacy to Mrs. G. Evidence admitted. *Abbot v. Massie*. III. 148
8. Upon a legacy to the wife of the testator, by the description of "his chaste wife," evidence of her incontinence is not admissible. IV. 809
9. Evidence, that an appointment was improperly obtained, being executed by a Will regularly proved, was rejected. *Kemp v. Kemp*. V. 849
10. A rule of property in equity is not therefore to be adopted at law: the Courts in some respects proceeding upon different principles: Courts of Equity, for instance, not allowing a single witness, unless supported by circumstances, to prevail against a positive denial by the Answer. VI. 183
11. The question, whether evidence, viz. a schedule written by the testator subsequent to the Will, could be admitted, was not decided. *Pole v. Lord Somers*. VI. 309
12. Upon a presumption of satisfaction by Will admissible: 1st, to constitute the fact, that the testator was debtor: 2dly, to meet or fortify the presumption. VI. 321

(a) See page 431, note.

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13. Evidence admitted upon equities arising out of presumptions; and in the case of the next of kin and executor evidence between the Will and the death of the testator, but as to his intention at the date of the Will. - - -	VI
14. A notary public has credit every where; but the certificate of a magistrate of a colony abroad requires evidence to his character. <i>Hutcheon v. Mannington.</i> -	VI
15. Whether the rule, that a Deed thirty years old proves itself, applies to a Will, <i>quære.</i> <i>M'Kenire v. Fraser.</i>	IX
16. Decree upon the evidence of a single witness against the positive contradiction of the Answer, containing circumstances giving greater credit to the deposition: the defendant declining an Issue. <i>East India Company v. Donald.</i> - - - - -	IX
17. Rule of evidence in equity, that, if there is nothing more than the positive, unqualified, assertion of one witness, and a positive denial by the defendant, the plaintiff shall not have a decree. Exception to that rule upon circumstances, giving greater credit to the witness. -	IX
18. Principle, upon the question, whether the circumstances outweigh the rule, that there shall be no decree upon the evidence of a single witness against a positive denial by Answer, that the defendant may have an Issue. -	IX
19. The rule of evidence in the Accountant-General's office ought to be the same as in the Court. Therefore upon the marriage of a woman, entitled to the interest of a fund for her separate use, an affidavit was required, beyond the marriage, and identity, that there was no settlement, or agreement for a settlement; without prejudice to future cases. <i>Clayton v. Gresham.</i> - -	X
20. Depositions to a fact, not put in issue, not permitted to be read. <i>Clarke v. Turton.</i> - - - - -	XI
21. Evidence in the Cause, though not read at the hearing, may be received by the Master. <i>Smith v. Althus.</i> -	XI
22. Lease not decreed upon expenditure in repairs and improvements under an alleged agreement, proved by one witness: the Answer containing a positive denial of the agreement; which denial was also confirmed by circumstances. <i>Pilling v. Armitage.</i> - - - - -	XII
23. No Decree upon the evidence of a single witness against the Answer; unless the Answer is not positive, or the witness is confirmed by circumstances. - - -	XII
24. Answer of one defendant not evidence against another. As to the Answer of a mere trustee, against whom the plaintiff does not desire a personal decree, <i>quære.</i> <i>Morse v. Royal.</i> - - - - -	XII
25. Upon a question of legitimacy, depending upon a chain of distinct circumstances, in the knowledge of different individuals, and the defendant, an infant, kept out of the way, an examination <i>de bene esse</i> would have been granted; though not within any of the three cases, viz.	

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witnesses of the age of seventy; or quitting the kingdom; or a fact depending on a single witness. But a proposal to have the infant brought into Court, and the Six Clerk assigned as guardian to put in his Answer, was adopted. *Shelley v. —*. - - - -

XIII. 56

26. Discretion of Commissioners, taking depositions, not to examine each witness to all the Interrogatories, and to reject what is not evidence. *Whitelock v. Baker*. -

XIII. 511

27. Publication enlarged upon a special case; where farther evidence is necessary; and it can be had without injustice or danger: not upon ignorance, or negligence of an agent; nor to the prejudice of a party, even by delaying the hearing; and affidavit required, that the party, his Clerk in Court, and Solicitor, have not seen, or been informed of, the depositions, and will not, &c.

XIII. 512

28. Order, that depositions shall be read at the trial of an Issue; if the witness shall be then dead; or proved to be in such a state of health as not to be capable of attending. Without such Order, to make the depositions evidence at law, the whole Record must be read. *Palmer v. Lord Aylesbury*. - - - -

XV. 179

29. Witnesses having been examined *de bene esse*, with the view to a trial at law, the examination of another witness is not permitted without strong circumstances; as, upon a second Ejectment, brought after verdict for the defendant, the examination of a witness, produced at the trial, who had not been examined under a bill to perpetuate testimony, was permitted, not as to other witnesses. *Palmer v. Lord Aylesbury*. - - - -

XV. 299

30. Distinction as to an Answer to a Bill of Discovery, read as evidence at law: the whole must be before the jury.

XV. 362

31. Depositions before publication suppressed; being taken by the Commissioners ready prepared: the witness being agent in the cause; and the mode, in which the Court receives the information, whether from the Commissioners, or otherwise, is not material. The Commission directed to proceed for the purpose only of re-examining that witness; substituting another Commissioner for one, who, having refused to qualify, was not permitted to be present at the examination. This Order not to prevent the Court's opening the depositions, if a case of necessity should arise; as, if the witness could not be again examined. *Shaw v. Lindsey*. - - - -

XV. 380

32. Depositions suppressed: the Commissioners having employed the Clerk of one of the parties as their Clerk.

XV. 380

33. Witness cannot give as his evidence answers in writing prepared before the examination: nor is any suggestion to him by the attorney, counsel, or any other person, during the examination, permitted; and in equity, whenever such fact is disclosed, the deposition will be suppressed. - - - -

XV. 381

34. Depositions suppressed, and a re-examination directed ; the deposition being taken from the witness, using during the examination, full minutes in writing, which she stated to have been originally her own, put into method by the attorney ; and so copied with some corrections by herself.
35. Extrinsic evidence admitted, not to construe a Will, but to shew, with reference to what it was made. - - -
36. Forgery not conclusive against a fact, proved by other evidence. *Lloyd v. Passingham.* - - - - - 2
37. The *Fleet* Register evidence, not as a Register, but a declaration upon the fact. *Lloyd v. Passingham.* - - - 2
38. By the *Canon* Law the Clergy are required weekly to form and sign the Registers, and annually to transmit a duplicate to the Ordinary. That duplicate is evidence. 2
39. Evidence not admissible to alter a Will. *Herbert v. Reid.* 2
40. Whatever is wanting to shew the consideration, and from whom it moves, may be supplied by evidence *dehors* the Deed ; where such evidence does not contradict the Deed. - - - - - X
41. Cross-examination as to the execution of Deeds. Order in the alternative ; either that the Examiner, with whom they were, should cross-examine ; or that they should be delivered to the Examiner for the other party for that purpose. *Turner v. Burleigh.* - - - - - X
42. Power of the Court of Chancery to examine *vivâ voce.* *Turner v. Burleigh.* - - - - - X
43. Re-examination not of course ; but at the discretion of the Court on special application. *Purcell v. M'Namara.* X
44. Order, after decree on behalf of a defendant, for the examination of another defendant upon Interrogatories, who had been examined, and cross-examined ; restrained to such of the points in the Cause, to which she had not been examined, as the Master should think reasonable. *Purcell v. M'Namara.* - - - - - X
45. Interrogatories for examination of a party settled by the Master. *Purcell v. M'Namara.* - - - - - X
46. Under a power of sale with consent of parties, testified by any writing or writings under their hands and seals, &c. attested by two or more witnesses, the attestation, going only to sealing and delivery, held not sufficient : nor a subsequent attestation, that they also signed : but a Case was directed (a). *Wright v. Wakeford.* - X
47. A single witness, not corroborated, not sufficient against positive denial by the Answer. *Cooke v. Clayworth.* - X
48. Copies of the books of the Bank of *England* are evidence : but upon a question, whether the signature to a transfer is the genuine hand-writing, the book must be produced. *Auriol v. Smith.* - - - - - X
49. Copy of the Parish Register evidence. - - - - - X

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(a) See the note, Vol. XVII. page 460.

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- A single witness cannot prevail against the Answer, unless confirmed by circumstances. *Savage v. Brocksopp.* - XVIII. 335
- Answer read as evidence, contrasted with the other evidence; not for the purpose of discrediting it. *Savage v. Brocksopp.* - XVIII. 335
- Distinction at Law and in Equity as to reading the Answer. At Law the whole must be read. - XVIII. 336
- As to admitting in evidence a Parish Register, not kept according to the *Canon*, requiring weekly entries, or a copy without proof, that the original is not to be found, *quære.* *Walker v. Wingfield.* - XVIII. 443
- Parish Register admissible evidence notwithstanding the loss of a leaf, not destroying the series of entries. *Walker v. Wingfield.* - XVIII. 443
- Object of taking evidence in secret to prevent attempts to support defective evidence already given: but farther inquiry, when necessary, not refused. - XVIII. 443
- Entries in bankers' books, not proved to have been communicated to the customer, not evidence against, but may be for, him. *Ex parte Pease.* - XIX. 25
- No instance of this Court taking notice of an affidavit before a Justice of Peace in *Scotland*; though the Courts of late have acted upon affidavits before Judges of the superior Courts there. - XIX. 344
- No new trial upon the improper rejection of evidence, if the Court, judging upon the whole Record, is satisfied, that the verdict is right. - XIX. 503
- Proof against the denial of all the witnesses to a Will of their attestation. - XIX. 507
- Commission to examine witnesses abroad executed and returned, the defendant, who had not Interrogatories prepared, not having had the opportunity of cross-examining. A new Commission granted for that purpose; the defendant to state, whom he wishes and undertakes to cross-examine; but the plaintiff's depositions not suppressed. *Campbell v. Scougal.* - XIX. 552
- Commissioners for examination of witnesses are to act impartially; though to a certain extent they have under their particular care the interest of the party appointing them. - XIX. 553
- As to the modern practice in country causes to supply Interrogatories from time to time, until the supply of witnesses is exhausted, *quære.* - XIX. 554
- Practice formerly to prepare all the Interrogatories both for cross-examination and original examination of defendant's witnesses before Commission opened. - XIX. 555
- Instances after Commission executed, of a new Commission granted or refused to a defendant, not having Interrogatories prepared, at discretion; to be granted with very deliberate attention to the circumstances; not suppressing the depositions taken; but, if necessary,

and a reasonable account given, why the defendant's case was not brought forward under the first Commission, allowing him a new one for cross-examination and the direct examination of his witnesses. - - - X

65. Depositions *in perpetuam rei memoriam* not published in the life of the witness except on incapacity to travel by sickness, &c.: such Orders, except in the excepted cases, proceeding on affidavit of the death of the witness; some expressly declaring, that the depositions of the other witnesses shall not be read. *Morrison v. Arnold.* - - - X

66. Distinction between examination *in perpetuam rei memoriam* and *de bene esse*. In a suit for the former purpose after the examination there is an end of the Cause. X

67. Examination to points not in issue of no effect. - - - X

68. Examination *de bene esse* granted to plaintiffs in a Bill to perpetuate testimony after *Subpœna* served, but before appearance of infant defendants, in contempt by the Messenger's Return, that they had absconded and were not to be found, on affidavit of the materiality of the evidence and danger of its loss, and undertaking to proceed with all due diligence to issue and examination in chief, to be proved before publication of the depositions *de bene esse.* *Frere v. Green.* - - - X

69. Examination *de bene esse* not extended beyond the cases of a single witness, the age of seventy, and dangerous illness, to a prisoner, charged with a capital felony. *Anon.* X

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ATTORNEY AND SOLICITOR.—HAND-WRITING.—INTEREST.—PAROL.—PEDIGREE.—PRESUMPTIVE.—RECORD.—WITNESS.

ATTORNEY AND SOLICITOR.—1. Must disclose acts: not confidential communications.

1. Attorney examined as a witness must disclose acts done in his presence by his client, as execution of a Deed, &c. not private confidential conversation with him; as the reasons for making it, &c. On motion to suppress the depositions referred to see what part came to his knowledge as confidential attorney, in order to have that suppressed. *Sandford v. Remington.* - - -

HAND-WRITING.—1. { Witness must have seen the party write,  
2. { and swear to his belief. Not from com-  
3. { parison of hands, or merely thinking it  
like.

1. Rule as to proof of hand-writing, the witness must have seen the party write; and swear to his belief, that the writing produced is his. - - - V

2. Comparison of hands by a person, who never saw the party write, is not evidence. - - - V



3. If the witness will not swear to his belief of the handwriting, but says, that he thinks it like, the *Lord Chancellor* of opinion, that is not evidence. - - - VIII. 476
- INTEREST.—1. Evidence of creditors for decree for a legacy rejected.
2. Auctioneer's commission does not defeat his evidence.
3. } Objection not waved by cross-examination, as
4. } at law.
5. Of creditor to sustain a commission of bankruptcy cannot be objected by himself.
1. Evidence of bond creditors of testator not admissible to obtain a decree for payment of a legacy; as they must be preferred to legatees. *Jones v. Turberville*. - - II. 11
2. The interest of an auctioneer from his commission does not defeat his evidence. - - - XIII. 474
3. In Equity objection to the competence of a witness from interest not waved by cross-examination. *Moorhouse v. De Passou*. - - - XIX. 433
4. At law objection to the competence of a witness waved by pursuing his cross-examination, after his interest appears; which formerly could be inquired into only on the *voir dire*: now, if interest comes out at any period, the evidence is rejected. - - - XIX. 434
5. The objection to a creditor, as a competent witness to sustain a Commission of Bankruptcy, cannot be taken by himself, to preclude his examination. *Ex parte Chamberlain*. - - - XIX. 481
- PAROL.—1. Not of agreement that annuity should be redeemable.
2. On written agreement in case of fraud or admission.
3. Not as to which clauses were read.
4. In what cases.
5. Declarations of party, previous to execution, in support of the deed: subsequent, impeaching it, rejected.
6. In what cases.
7. } To rebut presumption. Between executor and next
8. } of kin.
9. Where written rejected.
10. Not against conditions of sale by auction. Written alterations with jealousy.
11. Not as to what part of a paper ingrafted into a contract was read.
12. On latent ambiguity.
13. Declarations previous and subsequent to the Will of little weight.
1. Parol evidence not admitted to prove an agreement made upon the purchase of an annuity, that it should be redeemable. *Hare v. Shearwood*. - - - I. 241
2. On a written agreement parol evidence admissible in



- equity in cases of fraud, and where party will admit there was some agreement. - - - - - Vol. P  
I. 2
3. Agreement for a lease of a farm, referring to a paper containing the terms: Bill for specific performance according to such clauses as had been read to the plaintiff: parol evidence, to prove that, was refused; and the Bill dismissed. *Brodie v. St. Paul.* - - - - - I. 3
4. In what cases parol evidence admissible. - - - - - I. 3
5. Declarations of a party to a Deed, previous to the execution, admitted in support of the Deed, against imputations of fraud: declarations subsequent, impeaching the Deed, were rejected. *Conolly v. Lord Howe.* - - - - - V, 7
6. Parol evidence admissible upon a latent, not upon a patent, ambiguity; to rebut equities, grounded upon presumption; and perhaps to support the presumption; to oust an implication; and to explain, what is parcel of the premises granted or conveyed. - - - - - VI, 3
7. Parol evidence admissible to rebut a presumption, without regard to the nature of it; as, whether a mere casual conversation with a stranger, or between the parties, and upon the subject; or whether at the time of the transaction, previous or subsequent: but those circumstances are very material with reference to the weight and efficacy of it. *Trimmer v. Bayne.* - - - - - VII. 5
8. Where the executor is trustee of the residue for the next of kin, parol declarations previous and subsequent to the Will, as well as at the time, are admissible: but their weight and efficacy very different. - - - - - VII. 5
9. Evidence in writing, not admitted, as an agreement unstamped, does not prevent parol evidence; if otherwise admissible. *Hiern v. Mill.* - - - - - XIII. 1
10. Parol evidence against conditions of sale by auction rejected. Alterations in writing permitted with great jealousy. - - - - - XIII. 4
11. Though a paper, as the particular upon a sale by auction, may by reference be engrafted into a contract within the Statute of Frauds, that will not authorise the introduction of parol evidence to shew what part was read. - - - - - XV. 5
12. Legacy to A. if in the testator's service at the time of his decease. Parol evidence admitted to shew, that, though she had quitted his house, she continued, and was considered by him as, in his service; and upon that evidence the legacy was established. *Herbert v. Reid.* - - - - - XVI. 4
13. Evidence of testator's declarations, previous and subsequent to his Will, as to his intention admitted; but of little weight against what passed at the time of making it. - - - - - XIX. 6
- PEDIGREE.**—1. Hearsay of declarations by husband, as well as relations by blood, as to wife's legitimacy.
2. Slight, as reputation, sufficient. Forgery of considerable weight; though not decisive. - - - - -

**PEDIGREE.—3. Declarations of heads of families on inquisitions post mortem.**

4. Inscriptions on tomb-stones and rings.
5. Hearsay of relations: not the opinion of the neighbourhood.
6. Qualification as to tradition.
7. Declarations of relations: inconclusive without shewing the occasion: whether of physician or servant.

1. In the case of pedigree hearsay evidence of declarations by the husband as to his wife's legitimacy admissible, as well as those of relations by blood. *Vowles v. Young.* XIII. 140
2. Upon pedigree slight evidence sufficient; as reputation; and a forgery established is not decisive; but weighs considerably against the party producing it. *Vowles v. Young.* XIII. 140
3. Evidence of pedigree by declarations of heads of families upon inquisitions *post mortem.* - - - - XIII. 143
4. Inscriptions upon tomb-stones, and engravings on rings evidence of pedigree. - - - - XIII. 144
5. Hearsay of relations admitted to prove consanguinity; and without the correctness, required upon other facts. The degree therefore is not required. But, the principle being interest, the opinion of the neighbourhood will not do. - - - - XIII. 147
6. Qualification as to evidence of tradition, even upon pedigree. It must be from persons, having such a connection with the party, that it is natural and likely, from their domestic habits, that they are speaking the truth, and could not be mistaken. Upon that principle, descriptions in Wills, monuments, bibles, &c. are admitted. *Whitelocke v. Baker.* - - - - XIII. 511
7. Declarations of relations evidence of pedigree; but inconclusive, without shewing on what occasion; what led to them, &c. Whether a physician or servant, who attended the family, can be admitted as one of the family, *quære.* *Walker v. Wingfield.* - - - - XVIII. 443

**PRESUMPTIVE.—1. Of declaration of charitable use from an entry in an ancient book without date or signature.**

2. Discharging legacy from debts of legatee to testator.
3. Written statement, and account books, as to what testator considered his.
4. Of release of bond-debt.
5. Of deed of appointment; the only copy not executed, from recitals in a settlement and charges in a solicitor's books.
6. Of signature; though attestation only to sealing and delivery.
7. { Of settlement from drafts, statement in abstract, paper, importing to be an attested
8. { copy, &c.

- PRESUMPTIVE.—**9. Of signature; though attestation only to sealing and delivery.
10. Of testator's competence from a subsequent paper regarded with jealousy.
11. That witnesses saw testator execute, if they might have seen.

1. A declaration of uses by the Founder of a Charity presumed from an entry in an ancient book, purporting to be such declaration, but without signature or date: the book being kept by the trustees for entering their proceedings; and containing an order by the trustees, dated six years after creation of the trust, that the declaration of the Founder be then entered as a direction to the trustees. *Attorney-General v. Boulton*. II. 380. .1
2. A legatee, son-in-law to the testator, was held entitled to his legacy, discharged from debts, due by him to the testator, and a debt, for which the testator was his surety, upon evidence from the testator's accounts, letters, and memorandums in his hand-writing. Parol evidence of declarations in conversation was produced for the same purpose: but the Court appeared to rely on the evidence in writing. *Eden v. Smyth*. - - -
3. A statement of property, written by the testator, and his books of accounts, admitted as evidence, that he considered as his property, and meant to dispose of, property, not strictly, though in some sense, his: viz. mortgages and leases, the property of his wife under a Will, by which he was executor with her before marriage. *Druce v. Denison*. - - -
4. Circumstances not sufficient evidence of a release of a bond-debt. *Reeves v. Brymer*. - - -
5. Decree for raising money under a deed of appointment; though the only copy produced appeared not executed; upon recitals of it in a settlement, as a subsisting effectual deed, and evidence from the books of a deceased solicitor of charges for the preparation and execution of it. *Skipwith v. Shirley*. - - -
6. Power of appointment by deed, to be signed and sealed in the presence of witnesses. The attestation applying only to sealing and delivery, though the deed purported to be signed, sealed, and executed, it was presumed, that the signature was in the presence of the witnesses. *M'Queen v. Farquhar*. - - -
7. The existence and execution of a settlement by indentures of lease and release presumed from circumstances: principally the existence of the drafts; the statement in an abstract of the title; and the existence of the lease for a year of other estates, appearing to have been included in the same plan of settlement. *Ward v. Garnons*. - - -

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| . The production of a paper, importing to be an attested copy, may with other evidence have considerable weight.   | XVII. 144 |
| . Power to be executed by deed, signed and sealed in the presence of witnesses, and the deed expressed to be so executed, though the attestation appeared to be only to the sealing and delivery, signature in the presence of the witnesses presumed. - - - -                 | XVII. 458 |
| . Subsequent paper, though evidence of competence of a testator, regarded with considerable jealousy; as he is not permitted to prove his own sanity. Inference, that, if not then conscious of his competence at the previous time, he would have re-executed the Will. - - - | XIX. 506  |
| . Implication, that witnesses to a Will saw the testator execute, if so situated, that they might have seen him; not, where they were in an adjoining room, and could not. - - - - -   | XIX. 671  |

### CORD.—1. Of another Court.

- |   |         |
|---|---------|
| . Papers of Record in another Court of Justice used at the hearing of a cause in the Court of Chancery, saving just exceptions. - - - - - | XI. 559 |
|---|---------|

- WITNESS.—**
1. Good, who can recover nothing in the suit.
  2. Father to bastardize his issue.
  3. Not to disclose to parties.
  4. Demurring to discovery, though more effectual than examination; and interest charged.
  5. Not to be discredited by the party calling him.
  6. Examination to credit after publication.
  7. To old Will, of whom no account could be given, dispensed with.
  8. Examination to credit after publication.
  9. To devise insane: hand-writing proved.
  10. { Examination to credit after publication: limited
  11. { to the general question: not as to the ground of opinion.
  12. To deed must state the circumstances of the execution.
  13. Not to contradict his attestation. Other evidence admissible; or presumption.
  14. Whether attestation of Vice-Consul in his public character good to a devise.
  15. In the cause not, as others, examined before the Master without leave.
  16. Refusal to answer criminating question not an admission.
  17. Examination to credit at law.
  18. Examination *de bene esse* in what cases.
  19. Re-examined before publication on affidavit of mistake.
  20. Of mistake on indictment.
  21. Re-examined after publication on affidavit of mistake: limited to that.

- WITNESS.—22.** Refusing to answer criminating question no inference of the truth.
- 23.** Not compelled to answer questions tending to subject him to penalty, &c. How the question made.
- 24.** Not now cautioned, when not bound to answer.
- 25.** Concealed, as to conversation over-heard, received with caution.
- 26.** Compelled: though his civil right affected.
- 27.** } On *devisavit vel non* all examined, except ne-
- 28.** } cessity or waver: the rule not merely tech-
- 29.** } nical.
- 30.** Impeaching his act.
- 31.** Necessary exceptions to general rule, that all must be examined against the heir.

- |   |           |
|---|-----------|
| 1. Witness good, who can recover nothing in the suit.   | I. 61     |
| 2. A father coming to bastardize his own issue is, though a legal, a very suspicious witness.   | I. 134    |
| 3. Witnesses ought not to disclose their evidence to parties.   | VI. 32    |
| 4. Bill for discovery, in aid of an action: demurrer by a mere witness allowed; though the discovery would be more effectual than the examination at law, and notwithstanding a charge of interest in the defendant; as to which he may be called by the plaintiff; waving the objection; and, if called against him, may be examined upon the <i>voir dire</i> . <i>Fenton v. Hughes</i> . | VII. 287  |
| 5. A party, having called a witness, cannot discredit him.  | VII. 290  |
| 6. After publication passed liberty given to exhibit articles as to the credit of a witness, who had been cross-examined, by general Interrogatories, and as to such particular facts only as are not material to what is in issue in the cause. <i>Purcell v. M'Namara</i> .   | VIII. 324 |
| 7. Proof of one of the witnesses to an old Will, of whom no account could be given, dispensed with. <i>M'Kenire v. Fraser</i> .   | IX. 5     |
| 8. Order after publication for liberty to take out a Commission, and examine witnesses by general Interrogatories as to the credit of a witness, who had been cross-examined, and as to such particular facts only as are not material to what is in issue in the cause. <i>Wood v. Hammerton</i> .   | IX. 145   |
| 9. A witness to a devise of real estate having become insane, proof of his hand-writing was allowed. <i>Bernett v. Taylor</i> .   | IX. 381   |
| 10. Examination after publication confined to general credit, and to facts not material to what is in issue in the cause. <i>Carlos v. Brooke</i> .   | X. 49     |
| 11. Not competent even at law upon an examination to the credit of a witness to ask the ground of the opinion. The general question only is permitted, whether he is to be believed on his oath.  | X. 50     |

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- A witness to a deed must state the circumstances of the execution: the sealing and delivery. In this case an objection, that he had stated merely, that he was present at the execution, and was a subscribing witness, when the party executed and signed, did not prevail, upon the circumstances: especially as the execution was not put in issue. *Burrowes v. Lock.* - - - - - X. 470
- Witness is not at liberty to contradict his attestation. In such a case other evidence, from circumstances, admissible; as, where there is no witness, or the person does not exist, sealing and delivery may be presumed from proof of the hand-writing. - - - - - X. 474
- Whether the attestation of the Vice-Consul abroad, apparently in his public character, can be considered as the signature of a subscribing witness within the Statute of Frauds to a Will, devising real estate, *quære.* *Clarke v. Turton.* - - - - - XI. 240
- Witness examined in the cause cannot be examined before the Master without leave of the Court: but other persons may; and to the same points. *Smith v. Althus.* XI. 564
- Refusal to answer on the ground, that it tends to criminate the witness, does not amount to an admission. - XI. 523
- Examination to credit of a witness at law. - XII. 408
- Examination *de bene esse*, where the witness is above the age of seventy, or is the only witness to a particular fact. Refused upon affidavit of the agent to his information from the witness, that he can prove the fact, and belief, that no other person can prove it. *Rowe v. —.* XIII. 261
- Order before publication for re-examining a witness upon his affidavit, that through mistake as to time he submitted to be examined without looking at papers, which enable him to answer more fully and precisely. *Kirk v. Kirk.* - - - - - XIII. 280
- Evidence, that a witness upon recollection declared, he had sworn what was not true, and went back offering to correct it, but too late, admitted upon an indictment for perjury. - - - - - XIII. 284
- Re-examination of a witness after publication, upon his own application and affidavit, to correct mistake; but confined to that: the Court not permitting the whole deposition to be suppressed, and an entirely new examination. *Kirk v. Kirk.* - - - - - XIII. 285
- Party demurring to the discovery, or witness refusing to answer, facts tending to criminate himself, no inference to the truth of the fact. *Lloyd v. Passingham.* - XVI. 59
- Witness not compelled to answer Interrogatories, having a direct tendency to subject him to penalties, &c. or having such a connection with them as to form a step towards it. The question should not be made upon exception to the Master's Certificate, that he had allowed the Interrogatories; but, if the witness takes



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the objection, to the Report, whether the examination is or is not sufficient. <i>Paxton v. Douglas.</i>	- -	XVI
24. Relaxation of the old practice for the Court to inform a witness, that he was not bound to answer.	- -	XVI
25. Evidence of conversation over-heard by a witness, placing himself behind wainscot, &c. received with great caution. <i>Savage v. Brocksopp.</i>	- - - - -	XVII
26. Witness obliged to give testimony; though it affects his civil right.	- - - - -	XIX
27. On the trial of an issue, <i>devisavit vel non</i> , all the subscribing witnesses must be examined, except in cases of necessity; as death, insanity, or absence abroad, or the heir waves his right. <i>Bootle v. Blundell.</i>	- - - - -	XIX
28. The rule, requiring the examination of all the witnesses to a devise, not merely technical.	- - - - -	XIX
29. Examination of all the witnesses to a devise not a technical rule: the decision binding the heir's right to repeated ejectments, until so vexatious as to call for injunction.	- - - - -	XIX
30. Witness, impeaching his own act, to be received with the most scrupulous jealousy.	- - - - -	XIX
31. General rule in proving a Will against the heir, that all the witnesses must be examined; that general rule admitting necessary exceptions, as death, or absence out of the kingdom; and perhaps not applying, where the Will is, not wholly, but only partially, in question.	-	XIX

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1. Of the subject of the gift void.

1. An exception of the thing, that is the subject of the gift, is void. - - - - -

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1. Separate under joint judgment.

2. Against joint property: the action having no relation to the partnership.

3. Separate under joint judgment.

4. Of deed, not until sealed: Whether afterwards the party can say he had not delivered.

5. Signing a bond unnecessary.

1. Separate execution under joint judgment. - - - XVII. 413

2. Execution against joint property; though the foundation of the action had no relation to the joint concern. XVII. 413

3. Separate execution under joint judgment. - - - XVIII. 441

4. Deed not to be represented as sealed, until the seal is put by the party to the wax, or wafer. Whether, having sealed, he can be heard to say, he had not delivered, *quære*. - - - XIX. 296

5. Signing, as well as sealing, a common bond for money unnecessary. - - - XIX. 296

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## EXECUTION OF A WILL.

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## EXECUTOR AND ADMINISTRATOR.

1. At law executor takes any beneficial interest.
2. Not discharged by undue advancements to infant legatee.
3. Costs, when charged with interest.
4. Not charged by involuntary receipt.
5. Refusing cannot take a legacy in that character.
6. In *India* entitled to commission.
7. } Entitled to a legacy for care, &c. by concurring in directions for the funeral, &c.: though dying before probate: Whether if dying at a distance without shewing intention to accept, or notice.
8. }
9. Not by directions for the funeral.
10. His acts, which the Court would have approved, established, though no application.
11. Apportionment of dividend on bond to which he was beneficially entitled, and another, specifically bequeathed, but retained.
12. Not liable for receipts of co-executor by acts merely ancillary to his administration: otherwise, if concurring in the application.
13. Not entitled to commission, as agents, on remittances from *India*, received after the death.
14. Of Receiver, admitting assets, subject to interest under subsequent inquiry.
15. } Not conclusively charged by joining co-executor in the receipt; though not necessary: nor by indorsement of bill, remitted to both, to enable the other to receive.
16. }
17. } Charged with 5 *per cent.* and costs: with any gain, and
18. } liable to loss, for breach of trust.
19. Discharged from a loss.
20. Charged by negligence.
21. Leaving money on personal security.
22. Trustees by equal legacies; though by a subsequent instrument, and inequality as to the real estate.
23. Cannot buy the debts for himself.
24. Charged with interest.
25. Protected, doing what would be ordered.
26. Misapplication to his own debt.
27. In many respects owner as to others.
28. General power of disposition.
29. Charged with receipt of co-executor.
30. Distinction between executors and trustees joining in receipt.
31. Effect of the appointment at law.
32. Cannot buy the debts,

- 33.** To call in personal securities, and pay in his own debt.
- 34.** Decree against in nature of judgment. Subsequent course.
- 35.** Legacy by that description depends on the office.
- 36.** Two clearly trustees, all are so.
- 37.** Not trustees by legacies for rings, &c.
- 38.** Refusing, forfeits legacy in that character.
- 39.** Trustees expressly or by legacies. Next of kin not excluded by legacies.
- 40.** "When (annuitants) dead to return to the executors:"  
No trust.
- 41.** One a trustee by a legacy for his trouble: the other not, on evidence.
- 42.** Charged with interest: 4 *per cent.*; unless a special case.
- 43.** Charged with interest made.
- 44.** Money at his banker's considered as employed.
- 45.** Bound to accumulate, not to account, as if laid out in the funds; if not so; or if sold at an advance.
- 46.** Charged for negligence on a transfer to co-executor: not for what was applied; though he wasted other funds.
- 47.** Requisites to discharge co-executor.
- 48.** Charged by his act, though with innocent motive: not if merely passive. Acquiescence.
- 49.** Charged with 5 *per cent.* and costs.
- 50.** Receiver on misconduct: not on mean circumstances.
- 51.** 5 *per cent.* with rests under direction to accumulate for infant.
- 52.** Not trustees: two only having legacies, expressed from regard, and following a particular trust.
- 53.** Probate conclusive.
- 54.** Joint interest.
- 55.** Trustee by legacy for care, &c.
- 56.** All trustees, if one.
- 57.** Not trustees by unequal legacies.
- 58.** Trust not rebutted by legacy to next of kin.
- 59.** Not charged with interest under fair misapprehension.
- 60.** Not trustees by unequal legacies.
- 61.** ( Examined under the usual Decree, whether indebted:
- 62.** ( but an account must be on a distinct bill. His debt assets.
- 63.** Receiver before answer: not without a strong case.
- 64.** Charged with interest and costs: but not of course following interest.
- 65.** Legacy to executor presumed in that character.
- 66.** Charged with compound interest by half-yearly rests.  
Costs.
- 67.** Not trustees without strong presumption.
- 68.** Trustees expressly.
- 69.** Trustees under direction, that the property shall pass according to law.
- 70.** Probate conclusive; and on declarations subsequent to the Will not a trustee.
- 71.** Evidence for his right to residue: so for devisee against implied trust for the heir.

- 72. No issue between him and next of kin.
- 73. Hotchpot of advances by way of settlement applicable only to intestacy strictly.
- 74. } Pledge or disposition of assets; and distinction between
- 75. } specific and general legatee.
- 76. }
- 77. Payment for rings allowed, though not directed.
- 78. Trust, not declared or failing, for next of kin.
- 79. } Entitled to the residue : not against express intention,
- 80. } though failing; and take precisely as residuary le-
- 81. } gatees.
- 82. Purchaser not liable for executor's misapplication : nor in many cases of pledges; if no fraud.
- 83. His property, deposited with assets for his own debt, applied first.
- 84. Effect of time against demand for misapplication.
- 85. Security on the assets for his own advantage cannot be held.
- 86. No execution on the assets for his debt.
- 87. Pledge of assets, with knowledge of intended misapplication, cannot be held : Distinction between antecedent debt and present advance, as the consideration, not conclusive.
- 88. Trustee of the residue. Evidence.
- 89. No evidence against a legacy expressly for his care.
- 90. Legacy by the description confined to the character.
- 91. Entitled under a decree against him to an injunction against a creditor must give an account of the assets.
- 92. Right to retain his debt.
- 93. Against his claim of the residue no stress on the direction for payment of his legacy out of the personal estate.
- 94. Presumption from a legacy to him against his claim of the residue; to be rebutted by clear evidence.
- 95. Evidence not admitted, if clear on the Will, that he is, or not, a trustee.
- 96. Legal right to the residue, unless strong presumption; as a legacy : to be rebutted.
- 97. Whether intended to have the residue determined by the Court.
- 98. Not excluded by legacy to one, or unequal legacies.
- 99. Testator presumed to know, that a legacy excludes him from surplus.
- 100. Distinction on his legal right to the residue between incomplete disposition by Will or Codicil.

- 1. At law executors take any beneficial interest unless contrary intent. - - - - -
- 2. Legacy payable at twenty-one with 5 *per cent.* till payable : executrix advanced a sum larger than the legacy by discharging disbursements, all paid *bonâ fide* for the infant; though some were improper. Legatee when of age assigned the legacy. Assignee entitled against executrix to the legacy with 4 *per cent.* from the time it was payable. *Davis v. Austen.* - - - - -

3. Costs of course against executors, who are decreed to pay interest on account of a breach of trust (a). *Seers v. Hind.* - - - - - I. 294
4. A co-executor, who proved, but never acted, cannot be charged by receiving a bill by the post on account of the estate and sending it immediately to the acting executor. *Balchen v. Scott.* - - - - - II. 678
5. Executor, refusing to act, cannot take a legacy to him as executor. *Abbot v. Massie.* - - - - - III. 148
6. An executor in *India* passing his accounts in this Court is entitled to the commission upon payments, according to the practice in *India.* *Chetham v. Lord Audley. Poole v. Larkins.* - - - - - IV. 72
7. An executor, who died before probate, was held entitled to a legacy, given for his care and loss of time in the execution of the trusts of the Will by having concurred with the other executors in directions for the funeral, and in paying some small sums on that occasion. *Harrison v. Rowley.* - - - - - IV. 212
8. *Quære*, Whether an executor was entitled to a legacy in that character, who died at a distance without manifesting any intention to accept the trust, or without knowing it. - - - - - IV. 215
9. Giving directions for the funeral will not make a man executor. - - - - - IV. 216
10. If the executor without application to the Court does what the Court would have approved, it shall stand. - - - - - IV. 369
11. Dividend received by an executor on account of a bond specifically bequeathed, but retained by him, and another, to which he was beneficially entitled under the Will, apportioned. *Innes v. Johnson.* - - - - - IV. 568
12. One executor in trust is not answerable for the receipts of the other merely by taking probate, permitting the other to possess the assets, and joining in acts necessary to enable him to administer: otherwise if he goes farther, and concurs in the application. *Hovey v. Blakeman.* - - - - - IV. 596
13. Agents, being also appointed executors of the principal, are not entitled to commission upon remittances from *India* by the testator not received until after his death. *Hovey v. Blakeman.* - - - - - IV. 596
14. Executors of a Receiver, admitting assets, bound to answer what was upon a subsequent inquiry found due for interest. - - - - - IV. 606
15. Joining in a receipt, though perhaps not absolutely necessary, not conclusive against an executor, any more than against a trustee, to charge him with the receipts of his co-executor. - - - - - IV. 608

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(a) See the note.

16. Bill of exchange remitted to two agents, payable to them personally, who on the death of the principal become his executors: the mere indorsement of one, after they are executors, in order to enable the other to receive the money, is not sufficient to charge him, who does not receive it. - - - - -

IV.
17. An executor keeping the fund, and using it for his own benefit, contrary to his trust, decreed to account with interest at 5 per cent. and costs. *Piety v. Stace.* -

IV.
18. Executor, acting with regard to the testator's property in any other manner than the trust requires, is answerable to the *cestuy que trust* for any gain, and is liable to any loss. - - - - -

IV.
19. Executor discharged from a loss under favorable circumstances. *Bacon v. Bacon.* - - - - -

V.
20. Two executors under the circumstances charged with a loss by neglecting to call in money lent by the testator upon bond. *Powell v. Evans.* - - - - -

V.
21. Executors ought not without great reason to permit money to remain upon personal security longer than is absolutely necessary. - - - - -

V.
22. Equal legacies to two executors make them trustees of the residue undisposed of; notwithstanding inequality as to the real estate. So, though the legacies are given by a subsequent instrument. - - - - -

VI.
23. Executor cannot buy the debts for his own benefit. -

VI.
24. Executors charged with interest upon balances in their hands. *Longmore v. Broom.* - - - - -

VII.
25. The Court will protect an executor in doing what it would order. - - - - -

VII.
26. Transfer by an executor, a clear misapplication of assets, immediately after the death, to secure a debt of the executor and future advances, under circumstances of gross negligence, though not direct fraud, set aside by general legatees. *Hill v. Simpson.* - - - - -

VII.
27. In many respects, and for many purposes, third persons may consider executors absolute owners. - - - - -

VII.
28. Power of disposition generally incident to an executor.

VII.
29. One executor and trustee charged under the circumstances with a loss occasioned by joining in the sale of stock; the other having received all the money and absconded. *Chambers v. Minchin.* - - - - -

VII.
30. General rule, that executors joining in a receipt are all chargeable: in the case of trustees, only the person receiving the money. The reason of the distinction. The *Lord Chancellor* disapproved the relaxation in favor of executors of that rule. - - - - -

VII.
31. At law the appointment of an executor is a gift of every thing not disposed of. - - - - -

VII.
32. Executor cannot buy for his own benefit debts due from the testator's estate. - - - - -

VIII. 346.

# EXECUTOR AND ADMINISTRATOR.

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- 33.** Executor bound to call in money out upon personal security; and therefore to pay into Court money due from himself. - - - - - VIII. 466
- 34.** A decree against an executor is in nature of a judgment at law. After that he may on motion, without filing a bill for an injunction, restrain a creditor suing at law. The executor must pay the costs till notice of the decree, but not after notice; and he must make an affidavit as to the funds in his hands. *Paxton v. Douglas.* VIII. 520
- 35.** Legacy to a man described as executor: if the office does not continue, he shall not have the legacy. - VIII. 593
- 36.** Two of the executors being clearly trustees by the effect of directions annexed to their appointment, all the executors are trustees for the next of kin of the residue undisposed of. *Sadler v. Turner.* - - - VIII. 617
- 37.** Legacies of a diamond ring to one, and of £200 each to some of the others for mourning rings, as a token of affection, &c. would not make the executors trustees. *Sadler v. Turner.* - - - - - VIII. 617
- 38.** Executor, refusing to execute the trust, shall not have a legacy, given to him in that character. - - - IX. 534
- 39.** Executors trustees of the residue, undisposed of, for the next of kin by the effect of expressions in the Will, importing a trust, and reversionary legacies upon the decease of two annuitants. Legacies to the next of kin do not exclude them. *Seley v. Wood.* - - - X. 71
- 40.** Bequest of annuities for life: "when dead to return "to the executors:" a legacy to the executors beneficially; not as trustees. *Seley v. Wood.* - - - X. 71
- 41.** One executor having a legacy for his trouble, parol evidence was admitted on behalf of his co-executrix, an infant, to rebut the presumption for the next of kin; and she was held entitled to the residue, undisposed of. *Williams v. Jones.* - - - - - X. 77
- 42.** Executor, charged for withholding money, and not putting in his examination, with interest; but not beyond the general rate of the Court, viz. 4 per cent. and costs. For 5 per cent. a special case, beyond mere negligence, is necessary; as, that he employed the money in his trade. *Rocke v. Hart.* - - - XI. 58
- 43.** Executor, making use of the money, ought to pay the interest he made; as he ought not to derive any advantage from the trust-property. - - - XI. 60
- 44.** Executor, keeping money at his banker's, considered as employing it in his trade. - - - - - XI. 61
- 45.** Executor, bound to accumulate, cannot account, as if the money had been laid out in the funds; if it was not so laid out; or, being so, he had sold out at an advance. XI. 108
- 46.** Executors charged for negligence by joining in a transfer to a co-executor upon his representation, that it was required for debts: but not liable so far as they can



- prove the application to that purpose; though he possessed other funds, part of the assets, not through them; which funds he wasted. *Lord Shipbrook v. Lord Hinchinbrook.* - - - - - X
47. To discharge a co-executor the act must be necessary for the purposes of the Will; and he must use reasonable diligence in inquiring into the truth of the representation. X
48. Executor, doing any act, by which property gets into the possession of another executor, though with an innocent motive, is equally answerable. Otherwise, if he is merely passive. The *cestui que trust* barred by acquiescence. *Langford v. Gascoyne.* - - - - - X
49. Executor, in trust for infants, unnecessarily calling in the property, out upon good security at 5 *per cent.* except a small part, keeping large balances in his hand, and using it as his own, charged with interest at 5 *per cent.* and costs. *Mosley v. Ward.* - - - - - X
50. Though this Court will appoint a Receiver upon misconduct of the executor, it will not upon the single ground, that he is in mean circumstances. *Anon.* - - - - - XI
51. Executor, under a direction to accumulate for an infant, having become a bankrupt, his estate was charged with interest, at 5 *per cent.* with rests. *Dornford v. Dornford.* XI
52. Executors not trustees of the residue for the next of kin: two of them only having a legacy, expressed to be a testimony of regard: and immediately following a particular trust imposed upon them. *Griffiths v. Hamilton.* XII
53. Probate conclusive as to the character of executor. *Griffiths v. Hamilton.* - - - - - XII
54. The appointment of executors gives a joint interest in the residue; which, not being severed, survived. *Griffiths v. Hamilton.* - - - - - XI
55. Executor, having a legacy expressly for his care and trouble, is a trustee of the residue, undisposed of, for the next of kin. - - - - - XII
56. One of the executors being a trustee of the residue, all are trustees. - - - - - XII
57. Unequal legacies do not make executors trustees of the residue. - - - - - XI
58. A legacy to the next of kin does not rebut the trust of the residue undisposed of. - - - - - XII
59. Executor not charged with interest for a balance in his hands, retained under a fair misapprehension of his right to it. *Bruere v. Pemberton.* - - - - - XII
60. Executors, with unequal legacies, not trustees for the next of kin of the residue undisposed of. *Rawlings v. Jennings.* - - - - - XII
61. The examination of an executor under the usual decree for an account, ought to contain an Interrogatory, whether he is indebted to the testator: the debt from himself being assets. Liberty was therefore given upon

- the suggestion of co-defendants, legatees, without affidavit, to exhibit an Interrogatory for that purpose; not to go into an account; which must be the subject of a distinct bill. *Simmons v. Gutteridge*. - - XIII. 262
52. A debt, due by the executor, is assets; for the same reason that he may, if a creditor, retain; that he cannot sue himself. - - - - - XIII. 264
53. Receiver appointed before answer upon affidavit of misapplication and danger to the property in the hands of an executor; the co-executors consenting to the Order. A strong case necessary against an executor. *Middleton v. Dodswell*. - - - - - XIII. 266
54. Interest against executors for balances in their hands; with costs, upon the circumstances; not of course, merely as charged with interest. *Ashburnham v. Thompson*. - XIII. 402
55. Presumption, that a legacy to a person, appointed executor, is given to him in that character: though not apparently connected; unless there are circumstances, shewing, that it is intended for him personally. In this case the circumstances were rather the other way; the legacies, by codicils, to the persons appointed executors by the Will, standing altogether, and equal in amount. One of the executors, therefore, having renounced, not entitled to the legacies. *Stackpoole v. Howell*. - - - XIII. 417
56. Executor charged with compound interest, at 5 per cent. under a direction for half-yearly rests, as not having attempted to execute a trust to accumulate; though no loss happened; and a due execution of the trust could not have produced so much. Allowed subsequent costs of proceedings, consequential upon those, of which the costs were allowed him by the original decree: not as to the inquiries and accounts, relating to the breach of trust: nor charged with those costs; arising principally from a necessary investigation as to the rule, by which they ought to be charged (a). *Raphael v. Boehm*. - XIII. 590
57. Executors entitled to the residue, undisposed of: no inference against their legal right by any interest under the Will; one only having a legacy; and, though called trustees as to specific trusts, imposed upon them, distinct from their appointment, as executors, no clear intention to make them trustees of the residue; which requires a strong and violent, though not irresistible, presumption. *Pratt v. Sladden*. - - - - - XIV. 193
58. Executors appointed expressly in trust, take the residue undisposed of, not beneficially, but in trust for the next of kin. - - - - - XIV. 198
59. Testator, revoking all Wills and Codicils, declared that to be his Codicil; by which he directs, that the whole

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(a) See Vol. XI. page 92; and Vol. XIII. page 407.

of his property " shall pass by this my Codicil, according to law," save and except some legacies mentioned; and appointed his brother sole executor; requesting him to make such little arrangements as he has reason to think the testator should wish. The executor is a trustee for the next of kin and widow according to the Statute of Distributions. *Lord Cranley v. Hale.* -

XIV.

70. A paper, proved as a Will, reciting the marriage articles of the testator's daughter with *A.*; confirming those articles; and directing, that all the testator's property and effects shall be vested in *A.* preferable to any executor or administrator upon and after the testator's decease, for all and every the purposes of his said agreement expressed or intended. The probate, obtained by *A.*, as executor, conclusive; and he was held not a trustee for the next of kin upon parol evidence of declarations, subsequent to the Will. *Walton v. Walton.* -

XIV.

71. Parol evidence admitted in favor of the legal title of the executor to the residue; unless plainly and unequivocally declared a trustee: so for a devisee for a particular purpose against an implied trust for the heir. - - -

XIV.

72. No instance of an Issue upon the question between executor and next of kin as to the residue. - - -

XIV.

73. The provision in the Statute of Distributions for bringing advances by way of settlement into hotchpot, applies only to actual intestacy; not where there is an executor; and consequently a complete Will; though the executor may be declared a trustee. - - -

XIV.

74. Pledge by executors of bonds to the testator sustained upon advances of money from time to time for several years; the bill being filed, not by specific legatees, but by co-executors, who had not previously acted. *M'Leod v. Drummond.* - - - XIV. 353.

XVII.

75. Distinction between specific and general pecuniary legatee, claiming against a pledge of the assets by the executor. -

XIV

76. Distinction between specific and residuary or general legatees, claiming against the disposition of the assets by the executor. Relief in the latter case upon circumstances, implying fraud, in the legal sense: viz. an assignment, taken very soon after the testator's death, from the executor, for an antecedent debt from him on his representation, that the whole was left to him. -

XIV

77. A payment for mourning rings, though not directed by the Will, allowed, under the discretion given to the executors. *Paice v. The Archbishop of Canterbury.* -

XIV

78. Bequest to executors in trust, but the trust not declared, or failing, is a trust for the next of kin. - - -

XIV

79. Testator gave all his estate and effects to two persons, their heirs, executors, &c.: upon trust in the first place to pay, and charged and chargeable with, all his debts and funeral expenses, and the legacies after given.

- Those persons, whether they could claim in their individual characters, or not, being afterwards appointed executors, held entitled to the residue, undisposed of, (including a legacy to a charity, void by the statute 9 Geo. 2. c. 36,) for their own benefit; against the claim of the next of kin: the whole property being personal. *Dawson v. Clark.* - - - - - XV. 409 (a)
80. Instances, where the residue being intended to be given from the executors, they cannot take it; though the bequest does not take effect. - - - - - XV. 414
81. Executors take the residue precisely in the same plight as residuary legatees would take it. - - - - - XV. 417
82. Generally, a purchaser from an executor not bound by his misapplication of the money: nor in many cases even of pledge, if free from fraud, or direct evidence on the face of the transaction of an intended misapplication. XVII. 154
83. Upon a deposit by executors of the testator's property with their own for their own debt the latter to be first applied. - - - - - XVII. 158
84. Effect of length of time against a demand in respect of misapplication of assets by the executor. - - - XVII. 165
85. Security by executor upon the assets for his own debt and future advances, with other circumstances, proving the act not to be consistent with the duty of executor, but for his own advantage, cannot be held. - - - XVII. 168
86. Testator's effects cannot be taken in execution for the executor's debt. - - - - - XVII. 168
87. Pledge of the assets by an executor cannot be held, even against a pecuniary or residuary legatee, and though for money, advanced at the time, if under circumstances, shewing knowledge of an intended application, not conformable to, or connected with, the character of executor. Distinction between an antecedent debt and a present advance, as the consideration, not conclusive. - XVII. 170
88. Executor, having general and specific legacies, not expressly for his care, &c. was not precluded from giving evidence of the intention, that he should have the residue beneficially, by an exception of plate out of furniture, bequeathed to him, and by a bequest to him of a contract for a leasehold house, subsequent to the appointment of executor: the effect being only, that he should not take the plate under that bequest of furniture; and a future disposition of the residue might have been contemplated. Upon the evidence, raising no direct intention in his favor, but mere inference from equivocal declarations, with an intention to make an express residuary disposition, the executor declared a trustee of the residue for the next of kin. Affirmed on appeal. *Langham v. Sanford.* - XVII. 435. XIX. 641

(a) Affirmed on Appeal. See Vol. XVIII. page 247.

89. Executor, having a legacy, expressly for his care, &c. cannot produce evidence of intention, that he should take the residue beneficially. - - - - - XVI
90. Effect of the distinction upon a legacy to a person by name, or by the description of executor: in the latter case he takes in that character, with all the consequences. XVI
91. Effect of a decree against administrator, entitling him to an injunction against the suit of a creditor, qualified by requiring an account of the assets either by the answer or affidavit. *Gilpin v. Lady Southampton*. - - - XVII
92. Executor's right to retain his own debt. - - - XVII
93. Against the claim of an executor to the residue, no stress laid on a direction for payment of his legacy out of the personal estate. - - - - - XIX
94. Legacy to an executor, pecuniary or specific, raises a strong and violent presumption, that he was not, when the Will was made, intended to take the residue beneficially; to be rebutted in equity by parol evidence, clear and strong, of intention, that he shall take it. - XIX
95. Parol evidence not admissible, where it appears clearly and conclusively on the face of the Will, that the executor was meant to be a trustee of the residue; nor, if the legacy appears clearly not inconsistent with his taking the residue. - - - - - XIX
96. Legal right of executor to the residue, unless a strong and violent presumption to the contrary: which a legacy to him affords; liable to be rebutted by parol evidence of intention, that he shall have it. - - - XIX
97. Question, whether executor, when appointed, was intended to have the residue, always determined by the Court. - - - - - XIX
98. Executors not excluded from the residue by a legacy to one, or unequal legacies to all. - - - XIX
99. Testator presumed to know the law; viz. that a legacy to his executor excludes him from the surplus. - - - XIX
100. Distinction between the effect of an incomplete residuary disposition by the Will, or by a Codicil, upon the executor's legal right to the residue. - - - XIX

See *Assets* 27. 28. *Bank of England* 2. *Charge and Discharge* 1. *Charity* 2. *Costs* (*Trustee*, &c. 2.) *Creditor and Debtor* 2. (*Party* 1.) *Estate* (*Conversion* 11.) *Evidence* 13. (*Parol* 8.) *Exoneration*. *Fraud* 22. *Infant* 6. *Interest* 2. *Jurisdiction* 15. *Laches* 7. *Legacy* 1. 51. 52. *Limitations, Statute of*, (*Time* 13.) *Ne exeat Regno* 23. *Partner* 9. *Pleading* (*Answer* 5.) *Practice* 7. 107. 108. 260. 304. (*Party* 7.) *Principal and Agent* 24. *Receiver* 22. 23. *Representative* 25. *Residue* 3. 4. 9. 10. 11. 12. 13. *Resulting Trust* 1. *Retainer* 1. *Trust* 7. 8. 14. 20. 21. 27. 36. 40. 41. 43. 44. 48. 53. 54. 55. 56. 57. 58. 59. 63. 65. 74. 78. 81. 86. 102. 103. 116. 128. (*Resulting* 6. 8.) *Vesting* 49. *Will* 19. 20.

**EXECUTORY DEVISE.**

1. Principle, that, going beyond the period, it is void for the whole.
2. Limits.
3. That may postpone vesting beyond the limits void.
4. Time of gestation allowed both at the beginning and end.
5. Limits : including gestation.

Principle as to executory devise ; that, going beyond the period allowed by law, it is void for the whole ; and not good for the time allowed by law. - - - -

**IX. 130**

Limits of executory devise. - - - -

**IX. 131**

Executory devises, which may postpone the vesting beyond lives in being, and twenty-one years, &c. cannot be supported upon the possibility, that the estate may vest sooner. - - - -

**IX. 134**

In executory devise the time of gestation may be taken both at the beginning and the end. - - - -

**XI. 149**

Limits of executory devise twenty-one years after lives in being, with the period of gestation. - - - -

**XII. 232**

See *Executory Trust. Perpetuity 3. Waste 13. Will.*

**EXECUTORY TRUST.**

1. Of leasehold by covenant as far as the law will allow, with real estate : absolute in first tenant in tail.
2. } By Will or covenant in marriage articles : no difference
3. } in the execution : distinction of direct gift by Will.
4. } By Will.
5. }
6. Distinguished from executed.

1. Covenant in a marriage settlement to settle leasehold estates in trust for such persons, and such or the like estates, ends, intents, and purposes, as far as the law will allow, as were declared concerning real estate, limited to the first and other sons in tail-male, with several remainders, executed by giving the absolute interest in the leasehold estates to the first tenant in tail in possession, having attained the age of twenty-one. *Countess of Lincoln v. Duke of Newcastle.* - - - -

**XII. 218**

2. No difference in the execution of an executory trust by Will and a covenant in marriage articles. - - - -

**XII. 227**

3. Distinction between a Will, making a direct gift, and a covenant, by articles, to be executed ; not between a covenant upon consideration of marriage and an executory trust by Will. - - - -

**XII. 230**

4. Executory trust by Will. - - - -

**XII. 231**

5. Effect of a directory clause in a Will ; raising an executory trust ; which equity will mould to the purposes of the testator. - - - -

**XII. 234**

6. Distinction between trusts executed and executory, and the effect. - - - -

**XII. 238**

See *Devise 35. Executory Devise. Heir Looms 1. Trust.*



**See Assets 6. Exoneration.**

## EXONERATION.

1. Of tenant in tail, restrained as to alienation, from a charge.
2. Of tenant for life from incumbrance. Ground the scantiness of his estate.
3. Of tenant for life by assets of preceding tenant; who received the money on their joint mortgage.
4. Mortgage for a legacy with covenant for payment by the executor, not his personal debt.
5. Of real estate by personal only between heir or devisee and residuary legatee: not against creditors or legatees.
6. From a mortgage by a party, afterwards by election taking another interest.
7. Not by purchaser of equity of redemption agreeing to pay the mortgage without communicating with the mortgagee.
8. Of personal estate from debts only by necessary implication.
9. Limited to an individual legatee.
10. } Of personal estate from debts only by plain declaration or manifest intention.
11. }
12. } Of purchaser's heir from mortgage only where a personal contract originally.
13. }
14. Of heir from a mortgage, the personal debt of ancestor.
15. Of personal estate from debts, &c. not by a mere charge; requiring express words or plain intention.
16. Not of estate, exclusively charged, by implication.
17. } Of the personal estate on express words or plain intention: not by devise to sell for all debts.
18. }
19. }
20. Distinction between covenant by purchaser of equity of redemption merely for vendor's indemnity and a new contract.
21. Trust term for portions the primary fund; and a covenant auxiliary.
22. }
23. } Of personal estate from debts, &c. only by express declaration or plain intention. Inference from residuary legatee being first taker of the real estate.
24. }
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## EXONERATION.

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- Tenant in tail restrained as to alienation, but with powers of leasing and jointuring as in case of tenant for life, considered as tenant for life; and therefore his personal representative a creditor for a charge on the estate paid by him (intent to the contrary not appearing); though the subsequent remainders were exactly of the same nature; and, the term having been very short, little more than forty years remained. *Countess of Shrewsbury v. Earl of Shrewsbury.* - - - - - I. 227
- The true ground of inference for tenant for life, paying off incumbrance, is the scantiness of his estate; as *prima facie* he cannot be intended to discharge the estate of another; and it arises as much, where the estate goes unalienably in one direction, as when alienable. I. 234
- Tenant for life exonerated by the assets of a preceding tenant, who received the money upon a mortgage, in which they joined. *Finch v. Finch.* - - - - - I. 535
- Testator devised to his son, whom he made executor, all the real estate not specifically disposed of, subject to debts generally, and legacies to daughters, and also all his personal estate: the son devised part of the real estate to his sister, one of the legatees, for life, remainder to her children in fee: three months after, reciting that he was liable to her legacy by having taken upon him execution of the Will, and a former agreement to charge that legacy upon a particular part of his estate, he mortgaged the same estate, which he had devised, for that legacy; and covenanted in the deed to pay it: three months after by Codicil, expressing apprehensions, that his personal estate would be deficient, he created a trust of some real estate for all his debts of what nature and kind soever they should consist at his death, also legacies and funeral expenses: held, the legacy did not become a personal debt of the son; and therefore the mortgaged estate remained charged; and was not to be exonerated by the assets. *Hamilton v. Worley.* - - - - - II. 62
- The equity to have real estate exonerated by personal, subsists only between the heir or devisee and the residuary legatee; not against specific or general legatees, much less creditors. - - - - - II. 65
- A party, bound to elect between two interests, having mortgaged one elects the other; the former must be taken subject to the mortgage, but shall be reimbursed by the latter. *Rumbold v. Rumbold.* - - - - - III. 65
- Upon the purchase of an equity of redemption the agreement of the purchaser with the vendor to pay the mortgage, without any communication with the mortgagee, is not sufficient to make it the personal debt of the purchaser. *Butler v. Butler.* - - - - - V. 434
- To exempt the personal estate from the payment of the

- debts the Will must afford a necessary implication: viz. that inference, that leaves no doubt upon the mind of the Judge. *Hartley v. Hurley.* - - - - -
9. Bequest of personal estate exempt from debts by mortgage: the benefit of the exemption was confined to that legatee; and failed: the bequest having lapsed by the death of the legatee in the life of the testator. *Waring v. Ward.* - - - - -
10. To exempt the personal estate from the debts the Will must shew that intention by indication plain: a provision for the debts out of the real estate is not sufficient. *Brydges v. Phillips.* - - - - -
11. To exempt the personal estate from the debts there must be declaration plain or manifest intention. - - - - -
12. The heir of the purchaser exonerated by his personal assets from a mortgage: the result of the transaction being a personal contract: and the personal assets therefore the primary fund. *Waring v. Ward.* - - - - -
13. No exoneration of the heir by the personal assets of a party, who never personally contracted; or not originally, but only as a farther security in a subsequent transaction, not intended to disturb the order of charge: as the transfer of a mortgage; or the purchase of an equity of redemption: even though the interest is raised, the excess follows the subject of the original contract. - - - - -
14. Exoneration of the heir from a mortgage, the personal debt of the ancestor. *Ripley v. Waterworth.* - - - - -
15. The personal estate not exonerated from the debts and legacies by a mere charge. Express words or plain intention upon the whole Will necessary. *Watson v. Brickwood.* - - - - -
16. Devise of a particular estate, upon trust to raise and pay £400 to A., held an exclusive charge; not exonerated by a subsequent direction for the application of the personal estate to the debts and legacies in exoneration of the real estates before charged; which was referred to a prior charge upon the estates, expressly excepting the estate charged with the £400. *Spurway v. Glynn.* - - - - -
17. Devise, in trust to sell and pay off a mortgage; and to raise another sum; which the testator gave to his daughters. The personal estate, though bequeathed after payment of debts and legacies, exempted from the payment of those two sums, without express words, upon the plain intention. *Hancox v. Abbey.* - - - - -
18. To exonerate the personal estate from the testator's debt by mortgage, either express words or a plain intention must be found, - - - - -
19. A devise to sell for payment of all debts will not exonerate the personal estate. - - - - -
20. Though upon the purchase of an equity of redemption the incumbrance is not, as between the representatives

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## EXONERATION.

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of the purchaser, his personal debt, even by his covenant to pay, which is considered as only for indemnity of the vendor, it is, if, beyond that, he enters into a new contract with the mortgagee; as for different times and modes of payment, &c. *The Earl of Oxford v. Lady Rodney.* - - - - -

XIV. 417

21. Portions, to be raised by a trust term in a marriage settlement: the real estate held the primary fund; and a covenant by the settler to pay them auxiliary only. *Lechmere v. Carleton.* - - - - -

XV. 193

22. The personal estate being the proper and primary fund for the payment of debts and legacies, can be exempted only by express declaration, or plain and unequivocal manifestation of intention; and neither charge, nor a direction to sell, nor the creation of a term for payment, will exempt the personal estate. *Tower v. Lord Rous.*

XVIII. 132

23. The circumstance, that the residuary legatee is the first taker of the real estate, sometimes held a ground for exempting the personal. - - - - -

XVIII. 140

24. Exoneration of the personal estate from the payment of debts upon the plain intention, collected from the whole Will. *Boottle v. Blundell.* - - - - -

XIX. 494

25. To exempt the personal estate from the debts express words are not necessary; there must be plain intention, and necessary implication, *i. e.* not resting on conjecture, but sufficient to convince the Judge. - - -

XIX. 517

26. The personal estate first liable, in equity at least, to the debts. Its amount, unless apparent on the face of the Will, makes no difference. Not sufficient that the real estate is charged, unless the personal estate is discharged. - - - - -

XIX. 518

27. Upon the question of exoneration of the personal estate stress laid on the circumstance, that the same persons are to deal with the real and personal estates. - - -

XIX. 520

28. The personal estate first liable to the debts; unless the intention is clearly to exempt it, and throw them wholly on the real; for which express words are not necessary.

XIX. 521

29. Lord *Thurlow's* and Lord *Northington's* opinions, that there is no difference upon the question of exonerating the personal estate from giving it to the person appointed executor. - - - - -

XIX. 522

30. Weight of the clause, appointing the trustees of the real estate, charged with the debts, executors, depending upon the whole Will. - - - - -

XIX. 523

31. Upon the question, whether the real estate is exonerated, the Court is neither to go by conjecture, nor to require an intention so clear that no one can say it is otherwise. If the mind of the Judge is convinced of the intention, he is bound to declare it. - - -

XIX. 526

32. To exempt the personal estate from payment of the debts the intention, not merely to charge the real estate, but

- so as to discharge the personal, must be collected from the whole Will, so clear as to convince the judicial mind, which is to determine. - - - - - XI
33. Generally the personal estate is the primary fund for debts, funeral expenses, and legacies, not given out of a particular fund. - - - - - XI
34. Generally the trustees of the real estate being the executors is against the intention to exempt the personal estate from the debts: but may, under circumstances, turn the other way; as if they have legacies payable only out of the real estate. - - - - - XI
35. As to the effect, upon the question whether the personal estate is exonerated from the debts, of the distinction, whether it is given as residue, or as the personal estate simply, or after enumerated articles of a nature not applicable to the payment of debts, *quære*. The weight of such circumstances and of the inference from a strict settlement of an intention to preserve the real estate, depends on the whole of the Will. - - - - - XI
36. On the question of exonerating the personal estate from the debts, great stress has been laid on the real estate being made liable to the funeral expenses, &c. - - - - - XI

See *Assets* 28. 29. 30. *Baron and Feme* 5 to 18. *Mortgage* 7. 8. 9. 25. *Principal and Surety* 1.

### EXPECTANT HEIR.

See *Heir* 13. *Reversion* 1.

### EXPLANATORY ANSWER.

See *Answer* 19.

### EXTENT.

1. In aid. No equity to be reimbursed by his creditor, as having property sufficient for the Crown's debt.
1. There is no equity for a person, against whom an Extent in aid has issued, to be reimbursed by his creditor, on the ground, that he has property sufficient to satisfy his debt to the Crown without having recourse to the Extent in aid. *Phillips v. Shaw*. - - - - - VI

See *Bankrupt* 54. (*Extent* 1.) (*Lien* 2.)

### FACTOR.

See *Bankrupt* (*Reputed Owner* 8.) *Bill of Exchange* 6. 9. *Contract* 12. *Fraud* 8. *Lien* 7. 26.

### FAILURE OF ISSUE.

See *Perpetuity*.

### FALSE REPRESENTATIONS.

See *Fraud* (*Jurisdiction* 1. 2.)

## FALSIFYING.—FELONY.

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### FALSIFYING.

See *Account* (Settled 3. 4. 5. 6. 7.)

### FAMILY.

See *Heir* 15. *Will* 245. 251.

### FARM STOCK.

See *Landlord and Tenant* 17.

### FARTHER ANSWER.

See *Answer* 19.

### FARTHER EXAMINATION.

See *Practice* 386. 387. 388. 390.

### FATHER.

See *Advancement. Parent and Child. Portion. Satisfaction* 40. 41. 42. 43. 44.

### FEES.

See *Counsel* 3. *Privilege* 2.

### FEES, ACCOUNT OF.

See *Jurisdiction* 20. 21.

### FEE-SIMPLE.

See *Estate*.

### FELONY.

1. Distinguished from breach of trust: instances of acts not warranted by the purpose, for which property was delivered.
  2. Conspiracy to prevent prosecution.
  3. Plea of plaintiff's conviction: proved by the record, without oath, even to identity.
  4. Whether property can be acquired after transportation suffered.
  1. To constitute felony breach of trust is not sufficient. There must be a felonious taking. But that is satisfied by an act not warranted by the purpose, for which the property was delivered; as a tailor taking notes out of a pocket-book left in the pocket of a coat delivered to him to mend: or a hackney coachman, in whose coach it was left, &c. - - - - -
  2. A conspiracy to prevent a prosecution for felony is an offence. - - - - -
  3. Plea without oath of plaintiff's conviction for felony to a bill by the residuary legatee for an account of the personal estate of a testatrix, who died after the conviction, but before sentence of transportation completed, allowed: the conviction proved by the record alone; and not necessary to state even the identity upon oath. — v. *Davies*. - - - - -
  4. Whether a person, returned after sentence of transportation suffered, cannot acquire property, *quære*. -
- See *Bankrupt* (Commitment 4.) *Demurrer* 12. 13. *Lien* 27. *Pleading* 46. (Demurrer 24.)

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FEMALE INFANT.—FIRE.

V<sub>o</sub>

FEMALE INFANT.

See *Infant* 33. 35.

FEMALE WARD.

See *Ward of Court*.

FEME COVERT.

See *Baron and Feme*. *Election* 17. *Fine* 6. *Interest* 39. *Practice* 57. 72. *Will* 1.

FEME SOLE.

See *Baron and Feme* 2. *Bond* 2. *Infant* 1. *Set-off* 7. *Settlement* 1.

FINE.

1. Mentioning advowsons : not therefore intended.
  2. Levied by all descriptions to include every thing.
  3. By tenant in tail with reversion in fee lets it in. Distinction as to recovery.
  4. Its operation not prevented by bill.
  5. The original not forthcoming, Ejectment permitted on production of the lease for a year, and copy of the release.
  6. Of lands *ex provisione viri* ; the heir in tail joining.
  7. Passing future interest by estoppel.
1. Court will not intend, that there are advowsons, merely because mentioned in the fine. *Butler v. Every*. - ]
  2. Fines are levied by all descriptions of names to take in every thing ; and no objection, that any thing described was not really included. - - - - - ]
  3. Tenant in tail with reversion in fee levying a fine, lets in the reversion ; but suffering a Recovery bars it and all incumbrances ; and gains a new fee. - - - - - III
  4. A bill in equity not sufficient to prevent the operation of a fine at law. - - - - - V
  5. Remainder under an old settlement barred by a fine and non-claim ; the fine also working a discontinuance. The defendants producing the lease for a year and a copy of the release, the original not being forthcoming, the bill was retained ; with liberty to bring an ejectment ; and in default the bill to be dismissed with costs. *Snell v. Silcox*. - - - - - V
  6. No objection under the statute of *Hen. 7.* to a fine of lands taken by a *fême covert ex provisione viri* ; if the heir in tail joins. *Curtis v. Price*. - - - - - XII
  7. Effect of a fine operating as an estoppel, to pass any future interest. - - - - - XIV

See *Infant* 27. 28. *Lease (Renewal)* 6. *Pleading* 43. *Tenant in Tail* 5.

FINE APPORTIONED.

See *Will* 77.

FIRE.

See *Landlord and Tenant* 3. 57.

## FIRE INSURANCE.—FOREIGN STATE.

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### FIRE INSURANCE.

See *Covenant* 6.

### FISHERY.

See *Practice* 77.

### FISHING BILL.

See *Pleading* (*Demurrer* 14.)

### FLEET REGISTER.

See *Evidence* 37.

### FORECLOSURE.

See *Infant* 5. *Mortgage* 10. 23. 27. 28. 51. 53. 54. *Practice* (*Party* 11.)

### FOREIGN AFFIDAVIT.

See *Commitment* 3.

### FOREIGN ATTACHMENT.

See *Bankrupt* (*Execution* 3.)

### FOREIGN COURT.

See *Court, Foreign*.

### FOREIGN JUDGMENT.

See *Judgment* 1.

### FOREIGN POWER.

See *Pleading* 7.

### FOREIGN RESIDENCE.

See *Alien Enemy* 5. 6.

### FOREIGN STATE.

1. Attorney-General required as party to a suit by the Revolutionary Government of *Switzerland* for stock purchased by the old Government.
  2. *English* stock, the property of the *American* colony of *Maryland*, after the Revolution fell to the Crown.
  3. Not acknowledged by this country: whether a right to sue.
  4. War between them must be proved: not if this country is engaged.
  5. Stock, the property of the colony of *Maryland* before the Revolution, not affected by a transfer during the war.
1. The Court refused to order dividends, received before the bill filed, of stock, purchased by the old Government of *Switzerland*, to be paid into Court by the trustees on the application of the present Government, without having the Attorney-General a party. *Dolder v. The Bank of England*. - - - - -
  2. Stock in the funds of this country, the property of the *American* state of *Maryland* before the Revolution, after that event held to belong to the Crown as *bona vacantia*, - - - - -

X. 352

X. 354



3. Whether a foreign state, not acknowledged by this country, can maintain a suit here, viz. the Government of *Switzerland*, in consequence of the Revolution, suing for stock, vested in trustees by the former Government, *quære. Dolder v. Lord Huntingfield.* - - - **XI**
4. A war between foreign countries must be proved: but the Courts take notice of a war, in which this country is engaged, without proof. - - - - - **XI**
5. Stock in this country, in trust for the colony of *Maryland* before the *American* Revolution, not affected by a transfer during the war. - - - - - **XI**

See *Enemy* 1. *Jurisdiction* 2. 12. 13. 31. *Trust* 35.

#### FOREIGNER.

See *Alien. Bail* 1. *Ne exeat Regno* 1. *Trust* 52. *Ward of Court* 5.

#### FORESTALLING.

See *Contract (Illegal)* 11.)

#### FORFEITURE.

1. Non-user of public office.
2. Not immediate by non-residence.
3. As to relief on compensation.
4. Under by-law of corporation: no relief on accident.
5. By not paying instalment on Government loan: no relief.
6. } For breach of covenant: relief not beyond the case of
7. } payment of money. Statute as to non-payment of
8. } rent. Breach of covenant to repair.
9. }
1. Whether non-user is cause of forfeiture of a public office depends on circumstances. - - - - - **I**
2. Non-residence not an immediate forfeiture. - - - - - **I**
3. Relief against forfeiture, where compensation can be made; as against a clause of re-entry for breach of a covenant to lay out a specific sum in repairs in a given time; and not limited to cases of accident, &c. but even against negligence and voluntary acts (a). *Sanders v. Pope.* - - - - - **XII**
4. No relief against forfeiture under a by-law of an incorporated company for water-works; providing, that the members shall receive notice of default in paying a call; and incur the forfeiture by non-payment ten days after the notice sent; though the lapse arose from ignorance of the call from accidental circumstances, and absence from town, when the notice was sent. *Sparks v. Liverpool Water-works Company.* - - - - - **XIII**
5. No relief against forfeiture by not paying instalment upon a loan to Government. - - - - - **XIII**

(a) See notes, Vol. X. page 70; and Vol. XII. page 295.

## FORFEITURE.—FRAUD.

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6.	Relief against forfeiture of a lease for breach of covenant not extended beyond the case of payment of money, as in the instance of rent, to the other covenants; as to repair. <i>Hill v. Barclay.</i>	XVIII.	56
7.	Statute 4 Geo. 2. c. 22; regulating the relief of a tenant against a forfeiture for a breach of covenant by non-payment of rent.	XVIII.	60
8.	No relief against forfeiture by breach of covenant not to assign without license.	XVIII.	63
9.	The ground in <i>Hack v. Leonard</i> , 9 Mod. 91, for relief against breach of covenant to repair, if not such as to make repair before the end of the term impracticable, disapproved.	XVIII.	61
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### FORGERY.

See Evidence 36.

### FORMEDON.

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### FOUNDLING HOSPITAL.

See Charity (Jurisdiction 1.)

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### FRAUD.

1. Not presumed on age alone.
2. Husband obtaining transfer of wife's stock, agreed to be settled to her use.
3. Power of appointment, if no children: reference on suspicion.
4. Refusal to settle under agreement previous to marriage.
5. Lease obtained by collusion with steward.
6. In delivery of lease.
7. By servant: affects his assignee.
8. By factor, or manufacturer.
9. Fraudulent bankruptcy.
10. Trustees joining with remainder-man to eject *cestui que trust* for life.
11. In obtaining judgment or award.
12. Partner retiring.
13. New trial refused after two verdicts establishing fraud.
14. Setting aside instruments: no re-conveyance.
15. Distinction as to possession retained, with reference to third persons, and the parties.
16. Setting aside deeds: when a re-conveyance necessary.
17. Settlement by father and son supported upon the evidence; the son joining to subject a settled estate, sufficient consideration. Deed not set aside partially for fraud; nor on general charges.

18. In obtaining agreement for lease.
  19. Jurisdiction upon transactions in the colonies. Purchase of estate in the *West Indies* by creditor under his own execution.
  20. By creditor on composition.
  21. Misrepresentation by creditor on marriage of debtor.
  22. By debtor colluding with executor.
  23. Sale of command of *East India* ship.
  24. Securities to stand only for balance on general account; though the vouchers destroyed by general consent.
  25. Not by inadequacy alone.
  26. Effect of intention, not exactly accomplished.
  27. Sale of annuity by attorney to client.
  28. By creditor on composition.
  29. Purchase of inheritance by tenant for life.
  30. Influence of servant.
  31. Instrument delivered up under ignorance of one, with knowledge of the other.
  32. Relief to *particeps criminis*.
  33. Undertaking, preventing or obtaining a devise.
  34. A ground of relief against the Statute of Frauds.
  35. } Undertaking by devisee, or remainder-man, preventing
  36. } the charge of a legacy, or a Recovery.
  37. } Relief; though a different object intended.
  38. By the keeper of a house for lunatics on a person under his care.
  39. } By creditor under composition. Relief, though to *par-*
  40. } *ticeps criminis*. Distinction on consent.
  41. Deeds set aside after seventeen years.
  42. Inadequacy alone; or combined with misrepresentation, surprise, &c. Account limited.
  43. Clergyman, abusing confidence. as agent.
  44. } Affecting the interests of third persons. Preventing
  45. } a Recovery.
  46. } Relief to *particeps criminis* or Instigator. Creditor
  47. } suppressing his debt to induce another to contract.
  48. Assignment, void against creditors, established between the parties.
  49. Annuity, void under the act: the grantor the attorney, preparing the security.
1. Old age alone not a sufficient ground to presume imposition. *Lewis v. Pead.*
  2. Agreement on marriage to settle stock and other property of the wife, to the use of the wife; husband having by fraud made her transfer the stock to him decreed upon a bill for performance to transfer the stock and assign the rest under the direction of the Master to trustees for her use; who should receive the dividends due and to become due till the transfer and assignment. Costs on account of the fraud. *Lampert v. Lampert.*
  3. Devise of stock for life, with absolute power of appointment, if no children; referred to the Master for inquiry

- about a child upon the grounds for suspicion. *Sculthorpe v. Burgess.* - - - - - I. 91
6. Refusal after marriage to perform a previous agreement to settle is a fraud, against which equity will relieve. - I. 199
7. Renewal of a lease obtained by collusion between lessee and steward of lessor for an inadequate consideration: bill to set aside on refunding the money paid: after answer, submitting to that on receiving the money with interest, plaintiff by amended bill prayed either, as before, or that the defendant should keep the lease; and pay the full fine; which on account of the fraud was decreed with interest at 4 *per cent.* on the residue from signing the lease, and costs: but credit to be given for the money originally paid with interest: and, failing the lessee, the steward to pay. *Lord Abingdon v. Butler.* - - - - - I. 206
8. Fraud in obtaining delivery of a lease, the execution of which was obtained *bonâ fide*, affects it equally, as if used to obtain the execution: delivery making it a lease. I. 208
9. Servant, taking by collusion more than belongs to his office, must account: so must a stranger upon a bargain with a servant, which is a fraud on the master. - I. 289
10. Factor buying goods, which he ought to furnish as factor, taking the profits, and dealing with his constituent as a merchant instead of taking factorage duty or a stipulated salary, must account: so must a manufacturer, who obtained by collusion an unfair price. - I. 289
11. Costs as between attorney and client against parties to a fraudulent bankruptcy; except those, who discovered, and gave evidence: and the attorney deprived of the office of Master Extraordinary, and committed. *Ex parte Thorpe.* - - - - - I. 394
12. Trustees, who joined with remainder-man to eject *cestui que trust* for life, not excused from making good the whole rent reserved by subsequent accidental deficiencies. *Kaye v. Powel.* - - - - - I. 408
13. Bill showing, that a judgment at law was obtained against conscience by concealment, would open it. So an award would be opened in equity, if impeached upon equitable matter, as concealment, notwithstanding a clause, that it should be final. - - - - - II. 135
14. One partner retired: the others continued in partnership, and failed: in the interval large sums were paid to him, who retired, in respect of a balance due to him on account: under the bill of the assignees of the last partnership upon circumstances of fraud an account was decreed against the partner, who retired, with respect to the period of the last partnership, and refused as to the previous time. *Anderson v. Maltby.* - II. 244
15. New trial refused, after two verdicts against deeds and a will for fraud. *Bates v. Graves.* - - - - - II. 287

14. Instruments being absolutely set aside for fraud, there ought not to be a re-conveyance by the party, who took under them. - - - - -
15. Where there is a conveyance, and possession is retained, towards all third persons the ownership is not divested: but where deeds are set aside between the parties themselves and the heir of the party conveying, it must be upon actual fraud; and the retaining is only evidence; which with reasonable proof of weak capacity will be sufficient. - - - - -
16. Where deeds are set aside for fraud, but the estate has been conveyed to a third person, as an instrument, not privy to the fraud, or where they are set aside on paying so much money, a re-conveyance ought to be decreed. - - - - -
17. *A.* having an estate in fee of £6000 a-year, and being tenant for life without impeachment of waste of another estate of £5000 a-year with the reversion in fee after an estate in tail male in *B.*, his only son by a former marriage, became indebted by mortgage, annuities, and otherwise, to the amount of near £100,000. *A.* and *B.* joined in conveying both estates to trustees upon trust by sale or mortgage, sale of timber, or by rents and profits, to pay debts, and to apply so much of the rents and profits of what should remain unsold, as should seem meet to them, as a sinking fund, and to pay the residue to *A.* and to settle the remaining trust estates, subject to an annuity of £1000 to *B.* for the joint lives of him and *A.*, upon *A.* for life without impeachment of waste, with power to lease for twenty-one years only; remainder to trustees to preserve, &c.; remainder, subject to a jointure to the wife of *A.* and portions for children by her, to the joint appointment of *A.* and *B.*; in default thereof to the appointment of *B.* surviving; in default thereof to *B.* in tail male; remainder to the other sons of *A.* in tail male; remainder to *B.* in tail; remainder to the daughters of *A.* in tail with cross-remainders; remainder to *B.* in fee; with powers of leasing and full powers of management in the trustees, and a provision for the appointment of new trustees, as vacancies should happen. The trustees raised £50,000 by mortgage of the settled estate, which they applied to the debts; and they paid £2500 a-year to *A.* and £1000 a-year to *B.* from the date of the settlement. Upon the bill of *A.* to set aside the deed, except the trust for the debts, upon a general charge of fraud, misapprehension, and misrepresentation, or to control the management of the trust, and for an account against the trustees, the Court held, 1st, that the deed could not be set aside partially for fraud; nor under this bill totally; for then the prior estates in the settled estate must be re-vested clear of

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## FRAUD.

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- incumbrances, *A.* being under covenant to exonerate; and the mortgagees, who must either consent to change their securities, or be paid, were not parties: 2dly, that general charges of fraud required no answer, and could not support a decree; that upon the evidence there was no fraud or mistake; and that *B.*'s joining to subject the settled estate was sufficient consideration; 3dly, that the Court would not interfere with the trustees, there being no misbehaviour; and that the payment of the annuity to *B.* was good. The bill therefore was dismissed with costs; and the trustees having been always ready to account, the Court refused to retain it for that purpose; but without prejudice to a bill for that only. *Myddleton v. Lord Kenyon.* - - - II. 392
- Bill for specific performance of an agreement to grant a lease to the plaintiff would, on evidence of his fraud, misrepresentation, and insolvency, have been dismissed with costs, if not compromised. *Willingham v. Joyce.* III. 168
- The Court having jurisdiction *in personam* upon equity arising out of transactions concerning lands abroad, particularly if in the *British* dominions, a purchase of an estate in the *West Indies* by a creditor under his own execution was upon the circumstances held only a security for the debt, the expenses of the proceeding, and incumbrances paid by him, with interest; and subject thereto a re-conveyance was decreed. *Lord Cranstown v. Johnston.* - - - III. 170
- Upon a deed of composition one creditor was prevailed upon by the debtor to represent his debt below the real amount; receiving notes for the dividend upon the remainder, and bonds for the remainder of his debt beyond the amount of the dividend: upon the bill of the debtor and a creditor, party to the deed, the bonds were decreed to be delivered up: but the Court was of opinion the defendant would be entitled to the benefit of the notes, after all the trusts of the deed were satisfied; though not as against the creditors; and directed an inquiry as to that, reserving the question. *Eastabrook v. Scott.* - - - III. 456
- Creditor, at the desire of his debtor, about to marry, gave in a false account of his demand to the father of the intended wife: after the marriage the creditor is not bound, even as against the debtor. - - - III. 461
- Though generally a bill by those interested in the personal estate, as creditors, or next of kin, will not lie against a debtor to the estate, it will under circumstances; as in this case upon collusion with the representative. The defendant was also liable in the character of trustee and agent. *Doran v. Simpson.* - IV. 651
- By the owner) of the command of a ship in the service of the *East India* Company without their

- knowledge is illegal; and cannot be the subject of an action. - - - - - **V**  
**I**
24. On the ground of fraud a general account was decreed; and the securities to stand only for the balance; though the vouchers had been destroyed by general consent. *Wharton v. May.* - - - - - **I**
25. Bill to set aside the sale of a reversion dismissed with costs; the only ground on the evidence being inadequacy of price; and no fraud, &c.; and the bill filed twelve years after the sale. *Mott v. Atwood.* - - - - - **I**
26. If the intention is fraudulent, though not pointing exactly to the object accomplished, yet the party is bound. - - - - - **V**
27. Sale of an annuity by an attorney to his client set aside under the circumstances. *Gibson v. Jeyes.* - - - - - **V**
28. A separate agreement, securing to some creditors, who had executed a deed of composition, a greater advantage than the other creditors would have under the deed, and without their knowledge, cannot be enforced. *Mawson v. Stock.* - - - - - **V**
29. Purchase of the inheritance by tenant for life, though liable to objection, not to be impeached on general principles. - - - - - **I**
30. Bill to have deeds, assigning stock, delivered up, as obtained by undue influence by a servant over her master, and an account; the evidence of direct influence considerably subsequent to the deeds: the defendant a married woman; her only separate property stock; and not liable therefore without a lien. An issue being declined, the bill was dismissed. *Nantes v. Corrock.* - - - - - **I**
31. Relief upon an instrument, that had been delivered up, under the ignorance of one party, and with the knowledge of the other, as to a fact, upon which the right attached. *East India Company v. Donald.* - - - - - **I**
32. Relief on grounds of public policy to *particeps criminis*. *Hatch v. Hatch.* - - - - - **I**
33. Discovery compelled, whether a devise was obtained, or prevented, by the undertaking of the devisee, or heir, to do certain acts in favour of individuals; and relief upon the ground of fraud. - - - - - **I**
34. Relief against the Statute of Frauds on the ground of fraud; as against an absolute conveyance upon marriage; the agreement being subject to a defeazance. - - - - - **X**
35. Devisee, preventing the testator from charging a legacy by undertaking to pay it, bound in equity, though not at law. - - - - - **X**
36. Tenant in tail prevented from completing a Recovery by the fraud of a person, whose wife is entitled in remainder. Relief in equity; treating the estate, even in favour of a volunteer, as if the Recovery had been suffered. - - - - - **X**



7. Relief against fraud, intended against one person, taking effect upon another; and the same principle prevails in trespass and criminal cases. - - - - - XIII. 132
3. Deed set aside, as obtained by fraud and undue influence by a keeper of a house for lunatics from a person under his care; as within the general principle arising from the relation of guardian and ward, attorney and client, &c. *Wright v. Proud.* - - - - - XIII. 136
9. Bond, to secure to one creditor the deficiency of a composition, not communicated to the other creditors, decreed to be delivered up, with costs, though to *particeps criminis*; in these cases, proceeding upon public policy, the relief being given on account, not of the individual, but of the public. *Jackman v. Mitchell.* - XIII. 581
10. Bond to one creditor, to secure the deficiency of a composition, not communicated to the others, now held bad at law, as well as in equity; though formerly otherwise. Such a bond, with the privity and consent of the other creditors may be good. - - - - - XIII. 586
41. Deeds set aside, as absolute securities and conveyances, and ordered to stand as security only for what should appear due upon a general account, after a considerable lapse of time, seventeen years; upon the nature of the deeds themselves, the circumstances under which, and the confidential relation of the person by whom, they were obtained; and no confirmation; the other parties being throughout under the same influence, control, and ignorance of their rights. *Purcell v. M'Namara.* XIV. 91
42. Conveyance by lease and release and fine set aside upon great inadequacy of consideration, combined with misrepresentation and surprise upon parties in extreme distress, ignorant of their interests, and not properly protected; though the transaction took place twelve years before the bill; and a former bill having been dismissed, the plaintiff not appearing; that objection not being made either by plea or answer. As to the effect of inadequacy alone, *quære.* The account limited to the time of the bill filed. *Pickett v. Loggon.* - - - XIV. 215
43. Voluntary settlement by a widow upon a clergyman and his family set aside; as obtained by undue influence and abused confidence in the defendant, as an agent undertaking the management of her affairs; upon the principles of public policy and utility, applicable to the relation of guardian and ward, &c. *Huguenin v. Baseley.* - - - - - XIV. 273
44. Interests obtained through the fraud of another person cannot be maintained. - - - - - XIV. 289
45. Relief against a fraud by preventing a recovery; affecting the interests of third persons, not parties in the fraud. XIV. 290
46. In general cases, where a debt is cut down by the policy of the law, the complaint may be by *particeps criminis.* XV. 469

47. Creditor, by suppressing his debt inducing another person to enter into a contract, not permitted to set up the debt even against the person, in whose favour and at whose instance he made the suppression. - - - XVI.
48. Assignment of furniture, &c. by a debtor to his creditors in satisfaction of their debts, retaining possession under a demise at a rent, and afterwards taking a re-assignment from some on payment of their debts, with interest, though it would be void as against creditors, established between the parties against the answer, insisting, that the deed, though absolute upon the face of it with a fraudulent purpose, was intended only as a security; and the circumstances precluding any legal remedy. *Baldwin v. Cawthorne.* - - - XIX.
49. Grant of annuity void for want of a memorial registered; being charged on an estate of less annual value than the annuity; the grantor, being the grantee's attorney, preparing the security, and depositing the title-deeds; but misrepresenting the value of the estate: proof admitted under his bankruptcy only for the money advanced, with liberty to file a bill for an equitable lien upon the fraud and the deposit. *Ex parte Wright.* - XIX.

JURISDICTION.

- JURISDICTION.—1. { Equitable on false representation not ousted  
2. { by that assumed at law. Consequences  
of the latter.  
3. Distinction between void at law and voidable in equity.  
4. Distinction on relief in nature of damages, without fraud.  
5. Concurrent jurisdiction on wilful, fraudulent, misrepresentation.
1. An old head of equity, that if a representation is made to a man, going to deal on the faith of it in a matter of interest, the person making the representation, knowing it false, shall make it good; and the jurisdiction assumed by Courts of Law in such cases will not prevent relief in Equity. - - - VI.
2. Consequences of permitting an action for an injury sustained by giving credit upon a false representation by the defendant. - - - VI.
3. Distinction between a deed void at law for covin and voidable in equity for fraud. - - - VIII.
4. Bill not sustained, upon the ground of fraud or mistake: the relief being in the nature of damages, the subject of an action; and, the charges of fraud not being proved, the bill was dismissed with costs. *Clifford v. Brooke.* - - - XIII.
5. Action upon damage from a wilful, fraudulent, misrepresentation, though by a person, having no privity. Con-

current jurisdiction in equity; where the law cannot give so speedy and effectual relief. - - -

See Account 6. (*Settled* 4.) *Arbitration* (*Jurisdiction* 1.) *Attorney and Solicitor* (*Attorney and Client* 12. 15. 16. 17. 18.) *Auction* 4. *Bankrupt* 3. 63. 64. (*Assignee* 6.) (*Partner* 1.) *Baron and Feme* 2. 23. 95. 96. *Composition* 1. 3. *Confirmation* 1. 4. *Confusion of Property* 1. *Consideration* (*Inadequate* 2. 3.) (*Jurisdiction* 1.) *Construction* 5. 6. *Contract* 51. 83. 103. (*Specific Performance* 9. 13. 18. 27. 54. 57.) *Copyright* 13. *Creditor and Debtor* 2. (*Party* 1.) *Evidence* (*Parol* 2. 5.) *Frauds, Statute of*, 2. *Heir* 3. *Interpleader* 4. 6. *Jurisdiction* 38. 39. *Laches* 5. 18. *Legacy* 22. 24. *Mistake* 2. *Mortgage* 20. *Partner* 14. *Pleading* (*Demurrer* 13.) *Practice* 45. 60. 175. *Principal and Agent* 3. 7. 29. *Receiver* 27. *Set-off* 3. *Settlement* 4. 6. *Trust* 66. 119. *Voluntary Settlement, &c.* 1. *Waste* 14.

FRAUDS, STATUTE OF.

1. Evidence upon a written agreement refused.
  2. Evidence of executor's promise, preventing a new Will.
  3. Parol agreement for a new lease on improvements, &c.
  4. Trust implied from letters and a paper, not signed or dated, and advances of money.
  5. Requires trust to be, not created, but proved, by writing; which may be subsequent.
  6. Cases of part-performance, going beyond compensation, disapproved.
  7. Defence to performance of parol agreement admitted.
  8. Plea over-ruled on part-performance.
  9. Payment of money, as part-performance; and as to the proportion.
  10. Difference between 5th and 6th sections.
  11. Principle of rejecting unattested instruments.
  12. Defence to performance of parol agreement admitted.
  13. Plea, excepting a note in writing, admitted, over-ruled; as tendering an immaterial issue.
  14. Whether note in the third person is a contract signed.
1. Agreement in writing between landlord and tenant, signed by the landlord, for a new lease to be granted at any time after the completion of repairs to be made by the tenant, with all convenient speed: but blanks were left for the day of the commencement: the repairs being completed, the landlord tendered a lease to commence from that time; and on refusal filed a bill: the answer admitted, that the agreement was accepted; but insisted, that the new lease was not to commence till the expiration of the old; and so it was decreed; parol evidence being refused. *Pym v. Blackburn.* - -
2. Provision by Will increased upon evidence of the testator's request to the executor and residuary legatee and his promise; upon which the testator refused to

- make a new Will; and said, he would leave it to the generosity of the executor. *Barrow v. Greenough*. -
3. Bill by the tenant of a farm for a specific performance of a parol agreement for a new lease, stating improvements made at a considerable expense, and continuation of possession after the expiration of the old lease, and payment of an increased rent under the agreement: plea of the Statute of Frauds ordered to stand for an answer with liberty to except. *Wills v. Stradling*. - III.
4. Trust raised by implication from letters, and a paper referred to by them, and in the hand-writing of the party, though not signed or dated; and by operation of law from advances of money. The *Lord Chancellor* upon appeal affirmed the decree upon the points decided at the Rolls; and held farther, that the case was not within the Statute of Frauds; the question being, whether a partnership subsisted in the trade of a colliery, a question of fact to be tried by evidence, as upon an issue; the interest in the lease passing as an incident to the trade by operation of law; and the evidence from books and letters was admitted; and an issue refused. *Forster v. Hale*. - - - III. 696. V.
5. The Statute of Frauds requires, not that a trust shall be created by writing, but that it shall be proved by writing; which may be subsequent to the commencement of it. III.
6. The Court has gone too far in taking cases out of the Statute of Frauds on the ground of part-performance of an agreement: the relief ought to have been confined to compensation. - - - - - III
7. Bill for specific performance of a parol agreement to grant a lease for twenty-one years: plea of the Statute of Frauds, and answer denying, that facts alleged as a part-performance were done in part-performance: the plea was saved to the hearing with liberty to except; the *Lord Chancellor* inclining to the opinion, that, though the agreement is admitted, the statute may be used as a defence to the suit (a). *Moore v. Edwards*. -
8. Bill for specific performance of a parol agreement for a lease within the Statute of Frauds, charging possession taken under the agreement and other acts of part-performance: plea of the statute, and answer, not denying the acts alleged as a part-performance; but stating, that, being advised he entered as tenant at will, he gave notice to quit: plea over-ruled. *Bowes v. Cator*. - - - - -
9. Though payment of a substantial part of the purchase-money will take an agreement as to land out of the Statute of Frauds, on the ground of part-performance (b),

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(a) Since so decided. See the note, Vol. III. page 39.

(b) *Quære*. See the note, Vol. III. page 39.

# FRAUDS, STATUTE OF.—FRAUDULENT SETTLEMENT. 295

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- payment of a small part, as five guineas, the purchase-money being one hundred, will not do. The plea of the statute was allowed; with an intimation from the Court, that under the circumstances of the case the bill would be dismissed with costs. *Main v. Melbourn.* - IV. 729
0. Difference between the 5th and 6th sections of the Statute of Frauds. - - - - - VII. 372
1. Principle, upon which instruments, not duly attested, according to the Statute of Frauds, are rejected, and even one part may have effect, as to the personal estate, though not as to the real; not even raising a case of election. - - - - - VII. 375
12. Defendant insisting upon the Statute of Frauds, admissions by the answer are immaterial. *Blagden v. Bradbear.* - - - - - XII. 466
13. Bill for specific performance. Plea to the relief, and to the discovery, except (stating the particulars) of the Statute of Frauds, with an averment, that there was no contract in writing, signed, &c. unless the note in the bill mentioned can be so considered, and for answer (as to the excepted particulars) admitting the note, &c. over-ruled, as tendering an immaterial issue. *Morison v. Turnour.* - - - - - XVII. 175
14. Whether a note, written in the third person, "Mr. T. proposes," &c. (making an offer to purchase) being accepted, amounts to a contract in writing signed, within the Statute of Frauds, *quære.* - - - - - XVIII. 175
- See Auction 5. 6. Charity 42. Contract 46. 50. 59. 74. 79. 80. 89. 90. Devise (*Execution* 2. 3.) (*Witness* 3.) Evidence (*Parol* 11.) (*Witness* 14.) Pleading (*Answer* 11.) Principal and Surety 16. 23. Revocation 11. 12. 16. Will 186. 230. 242. (*Execution* 4.)

## FRAUDULENT ASSIGNMENT.

See Bankrupt (*Act of Bankruptcy* 16.) Creditor and Debtor 8.

## FRAUDULENT DEVISES, STATUTE OF.

- Construction upon the Statute of Fraudulent Devises. - IV. 550
- See Charge 12. Creditor 6. Devise 5. (*Witness* 2.) Will 242.

## FRAUDULENT SETTLEMENT.

1. After marriage: to impeach it the husband must be proved insolvent at the time.
2. Wife under covenant on marriage a creditor within the Statute.
- To impeach a settlement after marriage under the Statute 13th Eliz. the husband must be proved to have been indebted at the time, and to the extent of insolvency. The creditor not producing any evidence, his bill was dismissed; with liberty to file another. *Lush v. Wilkinson.* - V. 384

## **406 FRAUDULENT SETTLEMENT.—FRIENDLY SOCIETY**

2. Under a covenant upon marriage by the husband and the trustees, in case his wife should survive him, to pay her a sum of money, she is a creditor within the Statute against Fraudulent Conveyances, 13 Eliz. c. 5. *Rider v. Kidder.*

See Purchase 29.

### **FRAUD UPON MARRIAGE CONTRACT.**

See Contract 68.

### **FREE GRAMMAR SCHOOL.**

See Charity 50.

### **FREEMAN.**

See London 3.

### **FREEMASON.**

See Partner 16.

### **FREE SCHOOL.**

See Charity 50.

### **FREIGHT.**

1. } Distinct from the property in the ship ; insurable and
2. } not within the Registry Act.
1. The property in the freight may be distinct from that in the ship ; and is an insurable interest.
2. Assignment of freight alone is not within the Ship Registry Act.

### **FRENCH EMIGRANT.**

See *Ne exeat Regno.*

### **FRIENDLY SOCIETY.**

1. The preference confined to official debts.
2. Whether the preference against the Crown.
3. } The preference confined to officers strictly.
4. }
5. After one Order on petition the others on motion.
6. The preference confined to debts by virtue of office and independent of contract.
1. The Stat. 33 Geo. 3. c. 54, giving preference to friendly societies, having money due to them from their officers dying or becoming bankrupt or insolvent, does not extend to debts due from them individually, and not in their official characters. *Ex parte the Amicable Society of Lancaster.*
2. Whether the preference to friendly societies under the Statute 33 Geo. 3, would prevail against the Crown, *quære.*
3. A person, in the habit of receiving the money of a friendly society, having no treasurer appointed, upon notes carrying interest, payable a month after demand, is not an

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officer of the society, so as to entitle him to a preference under the Statute 33 Geo. 3. c. 54. s. 10. *Ex parte Ashley.* - - - - -

VI. 441

4. Money paid by order of a friendly society from time to time upon notes carrying interest, there being no treasurer appointed, is not money in the hands of the party by virtue of any office within the Act of Parliament, 33 Geo. 3. c. 54. s. 10, entitling the society to a preference in case of bankruptcy. *Ex parte Ross.* -

VI. 802

5. After one Order upon petition under the Friendly Society Act, the subsequent orders may be obtained on motion. *Ex parte Friendly Society.* - - - - -

X. 287

6. The preference, given to friendly societies by the Statute 33 Geo. 3. c. 54. s. 10, over other creditors, is confined to debts in respect of money in the hands of their officers by virtue of their offices, and independent of contract: therefore does not extend to money, held by the treasurer upon the security of his promissory note, payable with interest upon demand. *Ex parte Stamford Friendly Society.* - - - - -

XV. 280

### **FUNDS, PUBLIC.**

See *Assets* 32. 33. *Stock.*

### **FURNITURE.**

See *Baron and Feme* 96.

### **GAME.**

See *Trustee* 78.

### **GAMING.**

See *Bankrupt* (*Loss at Play* 1.) *Pleading* 16.

### **GAS.**

See *Nuisance* 5.

### **GENERAL ORDER AS TO RECEIVERS.**

Vol. I. 39.

### **GENERAL ORDERS.**

Vol. II. 39. 190. IV. 1. XI. 542. XIV. 184. 278. XV. 84. 185. 278. 279.

### **GENERAL ORDERS IN BANKRUPTCY.**

Vol. I. 190. V. 578. XIII. 207. XVI. 318. 319. 320. XIX. 616, n.

See *Bankrupt* (*Certificate* 16.) (*Commission* 14.) (*Petition* 2.) (*Superseding* 3.)

### **GENERAL PRAYER.**

See *Pleading* 41.

### **GENERAL RESIGNATION BOND.**

See *Resignation Bond* 3.



## GENERAL WORDS.

See *Statute* 3.

## GENTLEMAN.

See *Domicil* 5.

## GIFT.

1. Of banker's check, paid for value, good against executor, or if received before notice of the death.
  2. Ineffectually proved; and a discharge by the executrix.
  3. Whether the interest passes by mere delivery of the security.
  4. Of the whole property without undue influence: no relief.
1. Where a banker's check is given, and is paid away for valuable consideration or to a creditor, the executor is liable; and if the person, to whom it is given, receives it, before the banker has notice of the death of the drawer, it cannot be recalled. - - - - - I
  2. A gift of money, due on a mortgage and a bond, by the testator some time before his death to a daughter not sustained; upon the circumstances; merely a change of the securities from one drawer of a bureau to another by the wife of the testator by his direction: the fact and the declared purpose proved only by the examination of the daughter, claiming the benefit, and the widow, discharging herself, as executrix, by payments under the gift. *Bryson v. Brownrigg*. - - - - - I
  3. Whether the interest in money, due upon a mortgage or bond, passes by a mere delivery of the security, as a gift *inter vivos*. *Quære*. - - - - - I
  4. No discretion upon honorable or delicate feelings to relieve against a voluntary gift, even stripping the donor entirely of his property; if no undue influence. - XI

See *Attorney and Solicitor* (*Attorney and Client* 2.) *Baron and Feme* 38. *Construction* 5. 6. *Donatio mortis causæ*. *Guardian and Ward* 6. *Voluntary Settlement*, &c.

## GOOD-WILL.

1. Remedy upon the sale or undertaking not to carry on the same business, &c. by action or issue; and no injunction on affidavit.
  2. Distinction between penalty and liquidated damages.
1. Undertaking, upon sale of the good-will of a trade, not to carry on the same business, and to use the best endeavours to assist the purchaser, &c. The remedy for a breach is an action, or issue, *quantum damnificatus*; and an injunction against proceeding under a judgment for the consideration upon affidavits before answer was refused. *Shackle v. Baker*. - - - - - XI
  2. Distinction between penalty and liquidated damages under a covenant upon sale of good-will. - - - - - XI

See *Bankrupt* 49. *Partner* 10. 33. *Vendor and Vendee* 23.

**GOVERNMENT LOAN.**

See *Forfeiture* 5.

**GRAMMAR SCHOOL.**

See *Charity* 52.

**GRAND-CHILD.**

1. No interest by way of maintenance.
  2. Not entitled under bequest to children, except from necessity; nor by inference from knowledge of the family.
- 
1. No interest by way of maintenance upon a legacy simply to a grand-child or a natural child. - - - - VI. 546
  2. Under a bequest to children, grand-children are not entitled, except from necessity; as, if the Will would otherwise be inoperative; or, where by other words, as "issue," it clearly appears, that the word "children" was used, not in the proper, but in a more extended, sense. The construction not altered upon the inference from the testator's knowledge of the circumstances of the family. *Radcliffe v. Buckley.* - - - - X. 195
- See *Issue* 5. 6. *Maintenance* 1. 2. 3. 5. 8. 9. 13. 15. *Will* 155. 168.

**GRANT.**

1. Taken strongly by fair inference against grantor.
1. Grant to be taken as strongly in favour of the objects and against the grantor, as fair inference can allow. - III. 48
- See *Presumption* 17.

**GRANTOR.**

See *Trust (Resulting)* 2.)

**GREAT SEAL.**

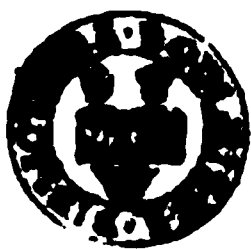
See *Lunacy* 62. 64. 66. *Patent* 9.

**GUARANTEE.**

See *Principal and Surety* 23. 24.

**GUARDIAN AND WARD.**

1. Changed on petition.
  2. Testamentary extended to children by future marriage.
  3. Testamentary : ineffectual attempt to revoke.
  4. }
  5. } Conveyance or gift by ward, &c.
  6. }
  7. }
  8. Appointment by Will unattested good by Codicil, confirming the Will, as altered.
  9. Appointed without reference only where the property is excessively small.
  10. Act beneficial without authority protected.
1. The proper application to change a guardian is by petition. *Ex parte The Earl of Ilchester.* - - - VII. 348



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2. The testator married, but, not then having children, gave the guardianship of all his daughters born or to be born to his wife, and of all his sons hereafter to be born to his wife and his brother or the survivor. The guardianship extends to all the children by that or a future marriage. - - - - - VII.
3. Testamentary appointment of guardian not revoked by a subsequent testamentary appointment, not executed according to the statute, and not directly importing revocation. - - - - - VII.
4. Conveyance by a ward to her guardian, under the circumstances set aside upon grounds of public policy after a great lapse of time. *Hatch v. Hatch.* - - - IX.
5. Difficulty in sustaining a transaction of bounty in the cases of guardian and ward, attorney and client, trustee and *cestui que trust.* - - - - - IX.
6. Relief against a deed of gift by a ward just of age to his guardian. - - - - - XIII.
7. Transaction, appearing to have grown out of the influence from the relation of guardian and ward, set aside; though all accounts had been settled, and the relation had ceased. - - - - - XIII.
8. Appointment of guardian by an unattested Will made good by a Codicil with three witnesses, on the same paper, referring to the Will, as annexed, making some alterations as to the legacies, and confirming it in all other respects; as in the case of a devise of land. *De Bathe v. Lord Fingal.* - - - - - XVI.
9. Order, appointing a guardian without a reference, only where the property is excessively small. Refused, where it amounted to £1500. *Ex parte Wheeler.* - - - XVI.
10. Act of guardian without authority, if beneficial to the infant, protected. - - - - - XVIII.

See *Attorney and Solicitor* (*Attorney and Client* 13. 17.)  
*Baron and Feme* 86. *Contract* 55. 83. *Devise* 6.  
*Fraud* 38. *Parent and Child* 10. *Practice* 240. 337.  
*Revocation* 12. *Trust* 53. *Trustee* 76.

### GUNPOWDER.

See *Nuisance* 5. 6.

### HABEAS CORPUS.

See *Bankrupt* (*Commitment* 3. 4. 7.)

### HAND IN HAND FIRE OFFICE.

1. Assignment of the policy to the heir necessary.
1. Under the constitution of the *Hand in Hand* Fire Office, the heir, to whom upon the death of the insured the property, being freehold, descended, cannot have the benefit of the policy without assignment. *Mildmay v. Folgham.* - - - - - III.

HAND-WRITING.

See *Evidence*.

HARBOUR.

See *Nuisance* 3.

HARROW SCHOOL.

See *Charity* 72.

HAY.

See *Tithe* 23.

HEARSAY EVIDENCE.

See *Evidence (Pedigree.)*

HEIR.

1. Claim to the produce of timber cut on estate of a lunatic by order.
2. Takes even against the intention without disposition.
3. Principle of setting aside sale of reversion by young heir, &c.
4. Entitled by resulting trust on contingent estate restrained from cutting timber.
5. Entitled in equity, as at law, to what is not disposed of.
6. Not disinherited without plain words or necessary implication.
7. } Rule in *Shelly's case*.
8. }
9. Resulting trust by lapse.
10. Entitled to costs, though failing in issue on a Will; except as to the issue.
11. Also devisee of estate not of the same nature.
12. Takes rents, &c. under trust to accumulate, eventually not disposed of.
13. Dealing for his expectancy protected to an extent approaching incapacity to contract.
14. Under devise in fee, in confidence to devise "to my "family," held entitled in remainder as *persona designata*. (Reversed.)
15. } Entitled under devise to a stock, family, or house. Distinction between such devise immediate after death
16. } of the first taker and a trust that he will devise, &c.
17. Construction of the words "after the death," as only subject to the life estates; repelling the implication of a life estate; if it could arise, where some of the devisees were not heirs.
18. Implication from devise after death of A. to one of two co-heirs.
19. Not disinherited without necessary implication.
20. Let in by devise void for uncertainty.
1. Timber on estate of lunatic cut under order of Court, sold, and produce paid into the Bank on account of the lunatic: after his death on petition by his heir for the money, *Lord Chancellor* was of opinion, that the Court may do it for lunatic's benefit, but only on pressing

occasions ; that when property is converted, equity will recal it for the representative, if done by breach of trust ; not if by accident, the Court, or the tort of a stranger : but on account of its consequence and difficulty of reversing order made on petition refused to give it to either representative without a bill. <i>Ex parte Bromfield.</i>	I.
2. There is no way to exclude an heir but by giving it to somebody else ; as he will take what is not disposed of even against the intention.	II.
3. Principle, upon which sales of reversions by young heirs, &c. are set aside.	IX.
4. Heir, entitled by way of resulting trust until the determination of an event, upon which future contingent estates were to arise, restrained from cutting timber. <i>Stansfield v. Habergham.</i>	X.
5. Whatever is not disposed of in equity results to the heir, as at law.	X.
6. Plain words of gift or necessary implication are required to disinherit an heir at law.	XI.
7. A remainder in fee by settlement to trustees limited to the life of the tenant for life, though not so expressed : the object of the trust terminating with that life ; and a remainder following to the same trustees, upon the death of the tenant for life, for a term of years. A subsequent remainder therefore to the heirs of the body of the tenant for life held a legal estate ; uniting with the legal estate for life ; and vesting an estate-tail, according to the rule in <i>Shelly's case</i> ; not an equitable estate, capable of taking effect only as a contingent remainder. <i>Curtis v. Price.</i>	XII.
8. The rule in <i>Shelly's case</i> takes effect, where an estate of freehold, though during widowhood only, is given, with a subsequent limitation by the same instrument to the heirs.	XII.
9. Resulting trust for the heir : a special disposition of money to be raised by sale of the estate, failing by lapse.	XII.
10. Heir at law, defendant, desiring an issue upon a Will, in which he failed, entitled to his costs in equity : no costs on either side as to the issue : ordered to pay costs of a groundless motion for a new trial. <i>White v. Wilson.</i>	XII.
11. Heir, being also devisee, takes by purchase, not by descent ; if the devised estate is not of the same nature.	XV.
12. Rents and profits under a trust to accumulate, being in the event not disposed of, belong to the heir at law. <i>Stanley v. Stanley.</i>	XVI.
13. Protection in equity to an expectant heir, dealing for his expectancy, approaching nearly to an incapacity to contract. Relief against a very advantageous purchase	

- from such a person without fraud; though mere inadequacy, unless from its grossness of itself evidence of fraud, is between persons, standing precisely equal, of no account. The relief on payment of principal, interest, and costs; the purchaser being considered as a mortgagee. His bill, to establish the purchase, dismissed with costs, except of depositions, used by the other party. *Peacock v. Evans.* - - - - - XVI. 512
- Devise and bequest of real and leasehold estates to the devisor's widow and her heirs for ever, "in the fullest confidence that after her decease she will devise the property to my family;" held an estate for life only; with remainder in trust for the devisor's heir, as *persona designata*. *Wright v. Atkins (a).* XVII. 255. XIX. 299
6. Construction of devise to a stock, or family, or house, the heir principal of the house. - - - - - XIX. 300
7. Distinction between an immediate devise after the death of the first taker "to my family," and a trust or confidence that he will devise "to my family." - - - - - XIX. 300
7. Construction of a Will, devising specific parts of the estate to certain persons for their lives, the residue after the death of those persons to others, some of whom were the heirs at law, that the words "after the death," &c. meant only subject to the life estates; repelling the implication of an estate for life in the residue, if it could arise; and whether it could, where some of the devisees were not heirs, *quære*. *Dyer v. Dyer.* - - - - - XIX. 612
8. Implication of an estate for life from a devise after the death of a person to one of two co-heirs of devisor. - - - - - XIX. 614
9. Implication, to disinherit an heir at law, must be necessary. - - - - - XIX. 614
10. Devise void for uncertainty lets in the heir. - - - - - XIX. 654

See Account 6. (*Mesne Profits* 2.) *Advancement* 1. *Assets* 32. *Baron and Feme* 10. *Charity* 6. 16. 20. *Contract* 49. 83. 88. *Copyhold* (*Surrender* 1. 9.) *Costs* (*Trustee, &c.* 1.) *Creditor* 4. *Devise* 20. 22. 41. 42. *Election* 26. (*Heir* 1. 3. 4. 5.) *Estate* (*Conversion* 10. 11. 12. 13. 16.) (*For Life* 8.) *Evidence* (*Witness* 29. 31.) *Executor* 71. *Exoneration* 12. 13. *Fraud* 33. *Infant* 17. 33. *Issue* 1. *Jurisdiction* 14. *Lapse* 2. *Legacy* 23. *Limitation* 2. *Lunacy* 61. *Merger* 2. *Pleading* 1. *Purchase, Words of.* *Representative* 7. 12. 14. 15. 21. 25. *Residue* 12. *Resulting Trust* 2. 3. *Reversion* 1. *Title Deeds* 23. *Trust* 43. 78. 119. 123. (*Resulting* 1. 3. 8.) *Will* 1. 48. 49. 120. 149. 165. 175. 286.

## HEIR APPARENT.

See *Bill to perpetuate Testimony* 2.

(a) Reversed. See the note, Vol. XVII. page 263.

## HEIR LOOMS.

1. To go with real estate, in strict settlement, as far as law and equity permit, vest in first tenant in tail.
1. Testator directed, that all his plate, furniture, &c. at his mansion-house should remain there as heir-looms; and devised the same to trustees upon trust to permit the same to go together with the mansion-house to such persons as should from time to time be entitled to it for so long time as the rules of law and equity would permit; and devised his real estates to trustees to the use of several persons and their first and other sons, &c. successively, in strict settlement. The absolute interest in the personal chattels vested in the first tenant in tail; and upon his death under age passed to his representative. *Carr v. Lord Erroll.* - - - - -

XIV.

See *Estate (Tail 9.)*

## HEREDITAMENTS INCORPOREAL.

See *Laches 19. Presumption 11.*

## HIGHWAY.

See *Nuisance 3.*

## HOLDER OF BILL.

See *Bankrupt (Proof 16.) Bill of Exchange (Discharge 1. 2.)*

## HOLY ORDERS.

See *Contract (Illegal 10.)*

## HOTCHPOT.

See *Advancement 1. Assets 23. 24. 26.*

## HOUSE.

See *Heir 15.*

## HOUSE OF COMMONS.

See *Demurrer 7. Qualification, &c. 1.*

## HOUSE OF LORDS.

See *Appeal 1. 4. Copyright 10. Practice 130. Privilege 1.*

## HUSBAND.

See *Baron and Feme. Infant 35. Lunacy 57. Ne exeat Regno 30. Representative 26. Ward of Court 6.*

## HYPOTHECATION.

See *Ship 1. 4. 5. 6.*

## IDiot.

See *Lunacy.*

## ILLEGAL CONSIDERATION.

See *Consideration. Deed 5.*



**ILLEGAL CONTRACT.**

*See Contract 92.*

**ILLEGAL PARTNERSHIP IN UNDERWRITING.**

*See Account 7.*

**ILLEGITIMACY.**

*See Legitimacy. Purchase 32.*

**ILLEGITIMATE CHILD.**

*See Bastard. Interest 41. Portion 18. Satisfaction 44. 47. 50. Will 208. 217. 218.*

**ILLUSORY APPOINTMENT.**

*See Power (Appointment 3. 7. 10. 20. 21. 22. 24. 25. 26. 31. 33. 34. 47. 48. 55. 56. 61. 62.)*

**IMPEACHMENT OF WASTE.**

*See Waste 4. 5.*

**IMPERTINENCE.**

*See Answer 18. Counsel 1. Injunction 28. Practice 39. 138. 164. 165. 292. 368. Scandal 5. 6. 7. 8. 9. 11.*

**IMPLICATION.**

1. Necessary.
2. Not to extend a limited appointment under general words, providing for no appointment.
3. In a Will must be necessary.
4. From devise after wife's death to the heir.

Implication necessary. - - - - -

III. 676

Under a power for raising portions for younger children an appointment by a charge, confined to a particular event of four or more, was not extended by implication from general words in a subsequent part of the deed, providing for the case of no appointment. *Mosley v. Mosley.* - - - - -

V. 248

Implication in a Will cannot prevail, unless necessary. *Upton v. Lord Ferrers.* - - - - -

V. 248

Devise after the death of the devisor's wife; if the devisee is heir, the wife takes for life by implication; otherwise not. - - - - -

V. 806

*See Assets. Cross Remainders 1. Deed 9. Devise 36. 37. Election 31. 32. Exoneration 8. 25. Heir 7. 17. 18. 19. Legacy 26. Portion 7. Power 39. Waste 4. Will 46. 121. 130. 307. (Mistake 11.)*

**IMPLIED COVENANT.**

*See Covenant 3. 4.*

**IMPLIED COVENANT FOR TITLE.**

*See Vendor and Vendee 26.*

**IMPOSITION.**

*See Fraud.*

# IMPROPRIATOR.—INDICTMENT.

V.

## IMPROPRIATOR.

See *Purchase* 15. *Tithe* 16.

## INADEQUATE CONSIDERATION.

See *Annuity* (*Consideration* 1.) (*Jurisdiction* 7.) *Auction* 4.  
*Consideration. Contract* (*Specific Performance* 20.)  
*Fraud* 42. *Heir* 13. *Reversion* 1.

## INCAPACITY.

See *Lunacy*.

## INCLOSING ACT.

See *Jurisdiction* 36. *Vendor and Vendee* 12.

## INCLOSURE.

1. Under an Act not *ad libitum*.
  2. Contract for sale under an act executed before award.
  3. Award under act evidence of, rather than constituting title.
1. Inclosure under an inclosing Act must not be *ad libitum*.
  2. Specific performance of a contract for sale of an allotment under an inclosing Act before the award: the Act expressly enabling a sale, and declaring the conveyance valid, before the award; and the purchaser having notice of the circumstances. *Kingsley v. Young*. - XVII
  3. Award under inclosing Act, rather evidence of, than constituting, title. - - - - - XVII

See *Injunction* 14. *Timber* 2.

## INCONSISTENT LIMITATIONS.

See *Will* 308.

## INCORPOREAL HEREDITAMENTS.

See *Laches* 19. *Presumption* 11.

## INCUMBRANCE.

See *Notice* 2. *Party* 10. *Purchase* 30. 32. 34. 35. *Term* 3. 4.

## INDEMNITY.

See *Contract* (*Specific Performance* 29. 31.)

## INDEPENDENT STATE.

See *Jurisdiction* 2.

## INDIA.

See *Executor* 6. 13. *Fraud* 23. *Infant* 1. *Principal and Surety* 4. 5. *Receiver* 21.

## INDIA COMPANY.

See *East India Company*.

## INDIA SHIP, SALE OF COMMAND.

See *East India Ship* 1.

## INDICTMENT.

See *Jurisdiction* 37.

INDORSEMENT.

See *Bankrupt (Bill of Exchange.) (Notice 1.) (Proof 15. 28.)*

INFANT.

1. Bound by fair settlement on marriage.
2. To sue by next friend without delay.
3. Liable for necessaries. Distinction between stranger and trustee advancing.
4. Not bound by covenant.
5. Foreclosed, subject to error.
6. Executor cannot have probate until twenty-one: administration by guardian, &c.
7. Payments to discountenanced.
8. Customary heir bound by covenant for further assurance: but foreclosure refused.
9. } *En ventre* considered in being, except a descent at common law. Object of the statute of Will. 3.
10. }
11. }
12. Trustee ordered to convey estate in *Calcutta*.
13. Trustee ordered on petition to convey to the persons entitled absolutely: not to trustee on trusts to be executed without a bill.
14. Conversion of personal property without authority in the Will qualified.
15. } Capital seldom broken in upon for maintenance: frequently for advancement. Generally not by trustee of his own authority.
16. }
17. Sale or Receiver, to avoid parol demurring.
18. Property in *India* not called in on Report, that it was for his benefit.
19. } Mortgagee ordered to convey estate in *Ireland*; and the order of reference, as well as to convey, must be on petition.
20. }
21. Defendant residing abroad, father, not interested, assigned guardian to put in the answer.
22. His bill dismissed with costs, not out of his estate.
23. The King's authority, as *parens patriæ*, in Chancery, not the King's Bench.
24. The Court acts for his benefit without regard to the prayer.
25. Trustee: costs of order to convey allowed: motion to commit the mother for not permitting it disapproved.
26. No exceptions to his answer; and, though manifestly insufficient, injunction dissolved.
27. One of the exceptions from common law bars or forfeitures.
28. Included by the words of a law in their ordinary sense can be excepted only by manifest implication.
29. } Trustee within the Statute must be a dry trustee, or interest discharged; as by the receipt of a co-executor.
30. }
31. Conveyance, as trustee voidable: Injunction, if, when adult, bound to convey.
32. Previous to foreclosure, with a day, &c. inquiry, whether for his benefit.

33. Female not bound by agreement to settle freehold estate on marriage without an option: but her heir bound under circumstances.
  34. Not affected by recital of deed during infancy.
  35. Act of female, *coverte*, not effectual against her agreement on marriage to settle: nor husband permitted to aid.
  36. Partial accession to settlement by female at twenty-one, an election as to the whole.
  37. Incapable of electing.
  38. Distinction between the jurisdiction in case of infant and in lunacy.
  39. Court acts as trustee; changing property for his benefit; not affecting his power.
  40. Jurisdiction to inquire whether of sound mind at his marriage, &c.
- 
1. Infant to express his consent joins in a settlement by a woman in contemplation of marriage with him: he is bound thereby, if on fair consideration, and no fraud; as where the transaction is public, and with consent of the family: though his being privy would not have concluded him from any rights as being an infant. -
  2. Infant ought to sue by next friend; not to wait till of age. *Blake v. Bunbury*. - - - - -
  3. Infant liable for necessaries: but more consideration will be had for a stranger, advancing him money, than a trustee. - - - - -
  4. Infant not bound by his covenant. *Johnson v. Boyfield*.
  5. An infant may be foreclosed, subject only to error. - I
  6. Where an infant is sole executor, administration shall be granted to the guardian, or such person as the Spiritual Court shall think fit, till the infant is twenty-one; at which time and not before probate shall be granted to him. - - - - - I
  7. Payments to infants during minority to be discountenanced. I
  8. Copyhold lands mortgaged in fee by lease and release as freeholds: the customary heir is bound by a covenant for farther assurance: but during his infancy the Court refused to foreclose; and would go no farther than directing the account, and that in default of payment the plaintiffs should be let into possession, and hold and enjoy, till the heir should attain twenty-one; at which time he should surrender; and a day was given to shew cause against the decree. *Spencer v. Boyes*. I
  9. A child *en ventre sa mere* may be vouched; may be an executor; may take under the Statute of Distributions, by devise, under a charge for portions; may have an injunction and a guardian. - - - - -
  10. A child *en ventre sa mere* is a life in being to all intents and purposes, except in the case of a descent at common law. - - - - -

11. The object of the statute 10 and 11 Wm. 3. c. 16, was not to affirm the case of *Reeve v. Long*: but it established, that the same principle should govern, where the limitation was by deed of settlement. - - - IV. 342
12. An infant trustee ordered to convey an estate in *Calcutta* under the statute 7 Anne, c. 19. *Ex parte Anderson*, V. 240
13. Order upon petition under the statute 7 Anne, c. 19, for an infant trustee to convey to the persons absolutely entitled, or as they shall appoint; but not to convey to a new trustee, upon trusts to be executed, without a bill. V. 240
14. Personal property of an infant ordered to be laid out in the purchase of land; though there was no authority in the Will for changing the nature of the property: but it was ordered, that the estate purchased should be conveyed in trust for the infant, his executors and administrators, till he should attain twenty-one, and afterwards for him and his heirs. *Lord Ashburton v. Lady Ashburton*. - - - VI. 6
15. General rule, that a trustee shall not of his own authority break in upon the capital of an infant's fortune. *Walker v. Wetherell*. - - - VI. 473
16. The Court very rarely has broken in upon the capital for the mere purpose of maintenance; though frequently for advancement. - - - VI. 474
17. Sale decreed, or a Receiver; where evidently for the benefit of the infant heir; to avoid the parol demurring. *Mould v. Williamson*.. - - - VII. 211, n.
18. The Court did not call in the property of an infant, upon security in *India*; the Master reporting it to be for his benefit that it should remain. *Sadler v. Turner*. - VIII. 617
19. Estate in *Ireland* ordered to be conveyed by an infant mortgagee under the statute 7 Anne, c. 19. *Evelyn v. Forster*. - - - VIII. 96
20. The order under the statute 7 Anne, c. 19, for the reference to the Master, as well as that for the infant to convey, must be on petition, not on motion. - - - VIII. 96
21. Infant defendant, residing abroad, his father, not interested in the suit, assigned his guardian, for the purpose of putting in his answer, on motion. *Jongsma v. Pfiel*. - - - IX. 357
22. Bill by an infant dismissed with costs upon a fact, which, though not known when the bill was filed, might with reasonable diligence have been known: the next friend not allowed the costs out of the infant's estate: but whether they shall be repaid, and out of what fund, or by whom, was reserved until the hearing. *Pearce v. Pearce*. - - - IX. 548
23. The Court of *King's Bench* has not any of the delegated authority, as to infants, existing in the King, as *parens patriæ*, and residing in the Court of *Chancery*, as representing the King. - - - X. 59

24. The Court will act for the benefit of an infant without regard to the prayer of the petition. - - -
25. The necessary costs of an infant trustee, ordered to convey under the statute of Queen *Anne*, allowed. Motion to commit the mother for not permitting the infant to convey not a proper mode of taking the opinion of the Court. *Ex parte Cant.* - - -
26. No exceptions to an infant's answer. In that case, therefore, cause against dissolving an injunction must be upon the merits, according to the answer: and, though it was manifestly insufficient, the injunction was dissolved. *Lucas v. Lucas.* - - - XI
27. Exception out of common law bars or forfeitures, by fine, final judgment in a writ of right, descent after disseisin, copyhold heir not coming in to be admitted upon the proclamations, in favour of infancy, non-sane memory, or absence beyond sea. - - - XV
28. Where the words of a law in their ordinary signification are sufficient to include infants, the virtual exception must be drawn from the intention of the Legislature, manifested by other parts of the law, from the general purpose and design of the law, and the subject-matter of it. Thus the statutes of limitation and of fines would have bound infants, &c. without an express exception: - - - XV
29. Infant trustee within the statute 7 Anne, c. 19, notwithstanding an interest, as co-executor, and co-residuary legatee, entitled to the mortgage-money: the receipt and discharge of the other executor leaving the infant a mere trustee. — *v. Hancock.* - - - XV
30. Infant trustee within the statute 7 Anne, c. 19, must be a dry trustee. - - - XV
31. Conveyance by infant trustee voidable, as not within the statute: if he would be bound to convey, when adult, he would in equity be restrained from setting it aside. - XV
32. Decree of foreclosure against an infant with a day to shew cause. (This has been altered since in *Mondey v. Mondey*, 1 Ves. & Bea. 223; directing, in case the mortgagees consent to a sale, an inquiry, whether it will be for the infant's benefit.) *Goodier v. Ashton.* - XVI
33. Female infant not bound by agreement to settle her freehold estate on marriage, without an option, when twenty-one, to refuse; but her heir bound under the circumstances; claiming as special occupant; the subject being leaseholds for lives, frequently during and since the coverture renewed by the husband, who had settled his own estate; the settlement confirmed by her repeated acts and fines, and by orders of Court; children having existed, though deceased under age: no claim for many years: and during eighteen an adverse possession, against a former heir by the husband: the

- bill claiming, not against his assets, but merely an account since his death against his devisee for life ; whose possession commenced long since the fall of the surviving life in the original leases. *Milner v. Lord Harewood.* - - - - - XVIII. 259
34. Interest of an infant not affected by the recital of a deed made during infancy. - - - - - XVIII. 274
35. Though a female infant is not bound by an agreement on marriage to settle her real estate, if she does not, when of age, choose to accede to it, her husband would not be permitted to aid her in defeating it : nor is her act during coverture effectual. - - - - - XVIII. 276
36. Partial accession at the age of twenty-one to a settlement by a female infant an election to abide by the whole. - XVIII. 277
37. Incapacity of infant to elect. - - - - - XVIII. 393
38. Distinction between the general jurisdiction of the Court of *Chancery* in the case of an infant and in lunacy. - XIX. 122
39. The Court acts for an infant as a trustee, changing property for his benefit, but so as not to affect his power over it even during infancy ; for instance, his testamentary power over personal property. - - - - - XIX. 122
40. Jurisdiction to direct inquiry as to the marriage of an infant ; whether of sound mind at the time, and whether for the infant's benefit that a commission should issue. - - - - - XIX. 289

See Account (*Mesne Profits* 2.) Bankrupt 35. 46. (*Partner* 9. 10.) (*Petitioning Creditor* 3.) Baron and Feme (*Dower* 1.) Construction 5. Contract 55. Creditor 4. Domicil 6. Dower 5. Estate (*Conversion* 5.) Executor 2. Guardian and Ward. Interest 24. 41. Laches 1. 22. Maintenance 1. 2. 3. 4. 5. 6. 7. 11. 17. 22. 23. Merger 1. 4. Mortgage 54. Parent. Partner 7. Portion 3. Practice 107. 157. 159. 218. 240. 269. 270. Representative 16. 17. Review 2. Satisfaction 19. Trust 3. 5. Ward of Court. Waste. Will 135. 259. (*Executory Devise* 4. 6.)

### INFLUENCE.

See Attorney and Solicitor (*Attorney and Client* 2. 3.) Fraud 4. Guardian and Ward 6. 7.

### INFORMATION.

See Charity 2. 3. 53. 57. 75. (*Costs.*) Corporation 1. Nuisance 1. Office 1.

### INHABITANT.

1. Various senses of the term.
1. Various senses of the term "inhabitant" with reference to the nature of the subject. - - - - - X. 339

### INJUNCTION.

1. Before answer limited to restraint.
2. Continued upon a patent : the Court of Law being equally divided.



3. Between *French* emigrants against securities obtained by arrest under an obligation, as surety, which by the law of *France* would not affect the person.
4. On sending surveyor to mark trees.
5. For waste not against adverse title.
6. On breach of covenant dissolved on answer.
7. Against tenant for breach of covenant not to break up meadow. Whether, if no covenant, upon waste.
8. Against trespass.
9. Where no account.
10. Against injustice done or threatened.
11. To the hearing; though legal title doubtful; as on patent right.
12. Against waste requires positive evidence of title.
13. Binds parties only.
14. Between lord and tenants of a manor. As to reading affidavits, original and new.
15. Against waste and trespass by tenant.
16. } Against trespass.
17. }
18. Not on belief of intent to cut.
19. Between tenants in common only against destruction.
20. Not revived on indictment for perjury found.
21. Against steward's transfer of stock, proved the produce of the master's property. Refused as to money at his bankers.
22. Limits of ornamental timber.
23. Refused as to timber on disputed title.
24. } Against negotiating bill: affidavits not read, as against
25. } waste.
26. Not to repair banks of a canal, stop-gates, &c.; but against impeding the use, &c. by keeping out of repair, &c.
27. Not, generally, on amendment and affidavit. Exceptions.
28. Reference for impertinence cause against dissolving.
29. Not pending demurrer.
30. On order for time, or attachment after eight days.
31. For want of answer to amended bill.
32. Stays execution only in the first instance; not, as in the Exchequer, trial.
33. To stay trial just at the assizes refused.
34. Against altering a private house for a coach-maker's business.
35. Sustained on exceptions filed.
36. Before action stays all: after, only execution.
37. } Affidavit, to extend it to stay trial.
38. }
39. Special requires service of *subpoena*.
40. Against darkening ancient windows restrained to equitable nuisance.
41. } In trespass; where title disputed; or on irremediable
42. } mischief: lord digging coal on premises of copy-
43. } holder: speedy trial secured.
44. Breach by proceeding against bail.
45. Not until appearance or default.

46. Extended to stay trial dissolved generally: not the subsequent Order separately.
  47. Against waste or action distinguished in practice.
  48. Stays action not commenced: otherwise execution only, not trial, without another application: distinction in the Exchequer.
  49. Affidavit to extent to stay trial.
  50. Refused on laches and expenditure permitted.
  51. Against use of water injurious to a mill on terms.
  52. Against proceeding at law only on some default.
  53. Dissolved on answer not revived of course.
  54. Contempt by breach by defendant, present during the motion, but retiring before the Order. Commitment refused on laches.
  55. In trespass.
  56. Against waste on possession clandestinely from tenant.
  57. } Distinction between Chancery and the Exchequer.
  58. }
  59. No affidavit as to title after answer.
  60. } On danger of irreparable injury to property; though a
  61. } public nuisance, in the instance of a corning-house;
  62. } cautiously applied to stop a great trade.
  62. Against injurious use of water.
  63. } To stay trial not discharged on answer of one defend-
  64. } ant. The truth of the affidavit not questionable:
  65. } nor the effect of the discovery considered, unless
  65. Execution only staid, where bill and answer form a defence in Equity, though not at Law.
- 
- Injunction from farther digging a ditch: but Court will not order it to be filled up till after answer. *Anonymous.* I. 140
  - Injunction; that the validity of a patent might be tried at law: verdict for the patentee, subject to the opinion of the Court upon a case: the Court equally divided: the patentee must bring another action: but the Court will not impose any terms upon him: nor dissolve the injunction in the mean time. *Boulton v. Bell.* III. 140
  - Injunction against securities obtained by one *French* emigrant from another by arresting him, when about to sail on the expedition against *France*, and under an obligation entered into in *France*, as surety, which according to the laws of *France* could not affect the person. *Talleyrand v. Boulanger.* III. 447
  - Sending a surveyor to mark out trees is a sufficient ground for an injunction. *Jackson v. Cator.* V. 688
  - Injunction to restrain waste not granted against defendant in possession, claiming by an adverse title. *Pillsworth v. Hopton.* VI. 51
  - (See Vol. V. page 555, *Landlord and Tenant*, No. 8.) The injunction, obtained upon a breach of covenant, in nature of a specific performance, dissolved upon the answer, contradicting the affidavits; and shewing consent for several years. *Burret v. Blaggrave.* VI. 104

- |   |     |
|---|-----|
|   | Vo  |
| 7. Injunction on affidavit to restrain the tenant of a farm from breaking up meadow, contrary to the express covenant, for the purpose of building. Whether, if no express covenant, it would do upon the ground of waste, <i>quære</i> . <i>Lord Grey De Wilton v. Saxon</i> . -   | V   |
| 8. Injunction, where the defendant, having begun to take coal in his own land, had worked into that of the plaintiff. <i>Mitchell v. Dors</i> . - - - - -   | V   |
| 9. Injunction, where there can be no account. - - - - -   | V   |
| 10. Injunction to prevent that, which is unjustly done, or threatened. - - - - -  | V   |
| 11. Injunction granted or continued to the hearing, though the legal title doubtful; as upon patent-rights. - - -   | V   |
| 12. Injunction to restrain waste not granted without positive evidence of title. <i>Davies v. Leo</i> . - - - - -   | V   |
| 13. Injunction not binding upon a person not a party in the cause. - - - - -  | VI  |
| 14. Injunction obtained on affidavits against cutting and pasturing cattle in a wood; the plaintiff praying the injunction as tenant in fee, or as lord of the manor inclosing under the Statute: the defendants denying the former title: as to the latter claiming common of pasture and estovers; and stating, that after the inclosure sufficient common of pasture would not be left; the plaintiff having before the bill filed been nonsuited in an action of trespass; and entered into an agreement with some of the tenants. The injunction dissolved upon the answer. Whether the original and new affidavits could be read in such a case, <i>quære</i> . <i>Hanson v. Gardiner</i> . - - - - - | VI  |
| 15. Lessee committed waste by opening a mine, and continued the work into other land of the lessor, not comprised in his lease. Injunction as to both. - - - - -  | VI  |
| 16. Injunction in the case of trespass; to prevent irreparable mischief. - - - - -  | VI  |
| 17. Injunction in the case of trespass; to prevent the multiplicity of suits. - - - - -   | VI  |
| 18. No injunction upon belief of an intention to cut timber. -  | VI  |
| 19. Injunction between tenants in common against destruction: not against pure equitable waste. <i>Hole v. Thomas</i> . -   | VI  |
| 20. That an indictment for perjury upon the answer has been found by the grand jury is not a ground for reviving an injunction. <i>Clapham v. White</i> . - - - - -   | VII |
| 21. Injunction till answer, restraining a transfer of stock standing in the name of a steward, on strong evidence by affidavit, that it was the produce of his master's property, rents, &c. received for many years without account. Refused as to money at his banker's in his name. <i>Lord Chedworth v. Edwards</i> . - - - - -   | VII |
| 22. Injunction against cutting ornamental timber confined to timber standing for ornament or shelter: the Court re-   |     |

# INJUNCTION.

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fusing to extend it by inserting the words, "contribute to ornament." <i>Williams v. M'Namara.</i> - -	VIII.	70
23. Injunction against cutting timber refused, where the title was disputed; as between devisee and heir at law. <i>Smith v. Collyer.</i> - - - - -	VIII.	89
24. Affidavits cannot be read in support of an injunction to restrain the negotiation of a bill of exchange. <i>Berkeley v. Brymer.</i> - - - - -	IX.	355
25. Ground of reading affidavits in support of an injunction against waste. - - - - -	IX.	356
26. Order specifically to repair the banks of a canal, and stop-gates, and other works, refused. But the effect was obtained by an order to restrain impeding the plaintiff from navigating, using, and enjoying, by continuing to keep the canals, banks, or works, out of repair, by diverting the water, or preventing it by the use of locks from remaining in the canals, or by continuing the removal of a stop-gate. <i>Lane v. Newdigate.</i> - -	X.	192
27. Plaintiff entitled to an injunction on affidavit, as to stay proceedings at law by a party abroad, must state the whole of his case within his knowledge upon the original bill; and cannot after answer, upon which he neither moved nor excepted, have the injunction upon amendment and affidavit, as a general rule: subject to exception; as circumstances come to his knowledge subsequently: surprise, &c. <i>Norris v. Kennedy.</i> - -	XI.	565
28. A reference of the answer for impertinence is good cause against dissolving an injunction. <i>Fisher v. Bayley.</i> -	XII.	18
29. Injunction pending a demurrer irregular. <i>Cousins v. Smith.</i>	XIII.	164
30. Injunction upon an order for time, or an attachment for want of an answer after the eight days expired. -	XIII.	167
31. Injunction of course for want of answer to an amended bill: an answer having been put in to the original bill; and no injunction obtained upon that. <i>Nelthorpe v. Law.</i> - - - - -	XIII.	323
32. Injunction stays execution only: not, as in the Court of Exchequer, trial also; but may afterwards be extended to stay trial upon a slight affidavit. - - - -	XIII.	323
33. Injunction to stay trial just at the time of the assizes refused. <i>Blacoe v. Wilkinson.</i> - - - -	XIII.	454
34. Injunction against proceeding with alterations in a house under an agreement for a lease; upon circumstances, that would probably prevent a specific performance; viz. surprise, the effect of fraudulent misrepresentation and concealment, and the particular nature of the alterations, for the conversion of a private house to the purpose of a coach-maker's business; wholly changing the nature of the subject. <i>Bennett v. Sadler.</i> - -	XIV.	526
35. Exceptions filed, which may be <i>nunc pro tunc</i> of course upon application within two months after answer, and afterwards upon special cause, will sustain an injunction.	XIV.	536

36.	Effect of an injunction in the Court of Chancery: before action commenced staying all proceedings at law: after action commenced permitting the defendant to call for a plea, and proceed to judgment at law, if in a condition to do so; or, if not, to do only what is necessary to enable him to do so; restraining execution. Therefore, after bail excepted to, ruling the sheriff to bring in the body a breach of the injunction. <i>Bullen v. Ovey.</i> - - - - -	XVI
37.	Injunction extended to stay trial on affidavit, that the plaintiff is advised and believes that he cannot safely proceed to trial until the answer. <i>Partington v. Hobson.</i>	XVI
38.	To extend an injunction to stay trial the affidavit must state belief, not merely that the plaintiff cannot safely go to trial, but that the answer will furnish discovery material to his defence in the action. <i>Appleyard v. Seton.</i> - - - - -	XVI
39.	Service of <i>subpoena</i> necessary in the case of special injunction: but, the practice having been unsettled, the defendant was put to dissolve upon the merits; and the plaintiff permitted to shew cause by affidavit. <i>The Attorney-General v. Nichol.</i> - - - - -	XVI
40.	Injunction against darkening ancient windows not in every case, affecting the value of premises, that would support an action. The effect must be, that material injury, amounting to nuisance, which should not only be redressed by damages, but upon equitable principles prevented. - - - - -	XVI
41.	Injunction in trespass: where the title was disputed. <i>Kinder v. Jones.</i> - - - - -	XVII
42.	Injunction against trespass upon irremediable mischief, in nature of waste, on a bill by the lord of a manor and his lessees against taking stones, having a peculiar value, found at the bottom of the sea within the limits of the manor. <i>Earl Cowper v. Baker.</i> - - - - -	XVII
43.	Injunction in the case of trespass by the lord of a manor digging for coal on the premises of a copyhold tenant. From the nature of the subject and the consequences such an injunction not to be continued without securing the means of a speedy trial. <i>Grey v. The Duke of Northumberland.</i> - - - - -	XVII
44.	Breach of injunction by proceeding against bail. <i>Leonard v. Attwell.</i> - - - - -	XVII
45.	No injunction until appearance or default. <i>White v. Klevers.</i>	XVII
46.	The subsequent Order, extending an injunction against proceeding at law to stay trial, not discharged separately; but the injunction, as extended, must be dissolved generally upon the answer by the usual order <i>nisi</i> , subject to shewing exceptions for cause, or the undertaking to shew cause on the merits. <i>Earnshaw v. Thornhill.</i> - - - - -	XVII

# INJUNCTION.

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47. Distinctions in practice between injunctions to stay waste, or the sale of an estate, and against an action. - - - XVIII. 488
48. Injunction before action commenced prevents the commencement; after action stays execution only in *Chancery*, differing from the *Exchequer*, without a distinct application to stay trial. - - - XVIII. 488
49. Injunction extended to stay trial on affidavit, that the plaintiff cannot safely go to trial without the answer, and believes it will produce discovery material to his defence. - - - XVIII. 488
50. Injunction against draining, preparatory to opening a coal-mine, with prejudice to a canal, before establishing the right at law refused upon laches for two years, permitting expenditure. *Birmingham Canal Company v. Lloyd*. - - - XVIII. 515
51. Injunction against using water injuriously to a mill, putting the plaintiff to go to trial forthwith. - - - XVIII. 516
52. Injunction against proceeding at law only on some default of appearance or answer. *James v. Downes*. - - - XVIII. 522
53. Injunction, dissolved on the answer, not revived of course without special motion on amendments verified by affidavit. - - - XVIII. 522
54. Contempt by breach of injunction by defendant, present in Court during the motion, though retiring before the order pronounced: but motion to commit after a considerable lapse of time, and the order not drawn up, refused with costs. - - - XVIII. 522
55. Injunction extended to trespass. - - - XIX. 147
56. Injunction against waste: defendant insisting on his own title; but admitting possession received from plaintiff's tenant without his knowledge. - - - XIX. 154
57. Distinction on injunction between the Courts of *Chancery* and *Exchequer*. - - - XIX. 376
58. Distinction on injunction in *Chancery* and the *Exchequer*; here staying all, if before action; if after, execution only, not trial, without a farther motion so to extend it on affidavit of belief, that the answer will be material on the trial. - - - XIX. 377
59. In injunction cases no affidavit as to the title after answer. *Platt v. Button*. - - - XIX. 447
60. Jurisdiction by injunction on danger of irreparable injury to property; though, as public nuisance, an object of prosecution by the Attorney-General; the subject a corning-house to powder-mills, from site, construction, &c. imminently dangerous to the neighbourhood and public. Indictment directed, with an arrangement for a speedy trial, and preventing imminent danger in the interval. *Crowder v. Tinckler*, - - - XIX. 617
61. Jurisdiction by injunction, where the effect will be to stop a great trading concern, exercised with caution;

- |     |  |            |
|-----|--|------------|
|     | not <i>ex parte</i> , but on notice, with the opportunity of opposing on affidavit. - - - - -  | Vol<br>XIX |
| 62. | Injunction on injurious use of a body of water against using it otherwise than as used before. - - - - -   | XIX        |
| 63. | Injunction to stay trial on affidavit, that plaintiff cannot safely defend the action without discovery, and that it will give a good and effectual defence, not discharged upon the answer of one defendant only. <i>White v. Steinwacks.</i> - - - - - | XIX        |
| 64. | The truth of affidavit to stay trial, that the discovery will be material, not questionable, nor the effect of the discovery considered, unless its immateriality is clear on the face of the bill. - - - - -  | XIX        |
| 65. | Execution, not trial, staid, where the bill and answer form a defence in equity, though not at law. - - - - -  | XIX        |
- See *Account (Mesne Profits 2.) Bank of England 3. 4. Bankrupt (Abatement 3.) Chattel 1. 2. Contempt 2. Copyhold (Mine 1.) Copyright 4. 6. 7. 9. 15. 16. Covenant 6. Goodwill 1. Interpleader 3. 19. Landlord and Tenant 7. 8. 9. 58. Nuisance 1. Partner 39. Practice 3. 5. 45. 46. 99. 108. 123. 135. 167. 168. 176. 177. 250. 251. 252. 309. 331. 360. 379. Tenant for Life 1. 2. Vendor and Vendee 11. Waste 12.*

## INJURY, IRREPARABLE.

See *Injunction* 60.

## INQUISITION OF LUNACY.

See *Lunacy* 27. 28.

## INQUISITIO POST MORTEM.

See *Evidence (Pedigree 3.)*

## INSANITY.

See *Lunacy*.

## INSOLVENT.

See *Bankrupt. Practice* 100.

## INSOLVENT ACT.

1. Bill by assignee of one, who, having made a general conveyance in trust for creditors, took the benefit of an Insolvent Act, dismissed with costs.
  1. Bill by the assignee of a person, who had made a general conveyance in trust for his creditors, and afterwards taken the benefit of an Insolvent Act, in respect of the surplus against the assignee, the trustee, and mortgagees, dismissed with costs. *Spragg v. Binkes.* -
- V
- See *Annuity (Valuation 2.)*

## INSUFFICIENT ANSWER.

See *Answer* 3. *Practice* 164. 165.



**INSUFFICIENT EXAMINATION.**

*See Practice 356.*

**INSURABLE INTEREST.**

1. Arrears of annuity or any debt.
  2. In trustee of a ship as well as *cestui que trust*.
  3. Equitable interest insurable.
- |  |           |
|--|-----------|
| Arrears of annuity, or any other debt insurable. - -   | VII. 302  |
| Insurable interest in a trustee in respect of the legal interest in a ship; as in the <i>cestui que trust</i> in respect of the equitable. - - - - - | XV. 67    |
| Equitable interest insurable: both trustee and <i>cestui que trust</i> have an insurable interest. - - - -   | XVII. 253 |

*See Freight 1.*

**INSURANCE.**

1. Without a policy illegal.
  2. Discharged by immaterial variation.
- |  |         |
|--|---------|
| Insurance without a policy is illegal. - - - -   | II. 18  |
| Variation from policy of insurance, though perfectly immaterial, discharges the insurer. - - - - | II. 541 |

*See Account 7. Alien Enemy 1. Annuity (Memorial 7. 8.) Bankrupt 13. 15. Contract (Illegal 1. 4. 5.) Covenant 6. Set-off 8.*

**INSURANCE COMPANY.**

*See Party 25.*

**INSURANCE, ILLEGAL.**

*See Contract (Illegal 9. 12.)*

**INSURANCE, LOTTERY.**

*See Pleading (Demurrer 12.)*

**INSURER.**

*See Bankrupt (Underwriter 1.)*

**INTEREST.**

1. On debt by simple contract.
2. For breach of trust.
3. Not on petition, if not reserved.
4. Not on demands liquidated by the Report.
5. For mortgagee on the whole liquidated by the Report.
6. Not subsequent to a judgment.
7. On farther directions, though not reserved.
8. By the Report and on farther directions confined to debts carrying interest.
9. } 4 per cent. only, where no rate specified. Reason of
10. } the rule: not invariable.
11. In administration of assets not on judgment *quando acciderint*.
12. Not on judgment in account or action.

13. Not on legacy to niece before time of payment.
14. On legacy to a child only, from parent's death.
15. Not from legatee's death to the time of payment, unless expressed.
16. Legacy to wife.
17. On legacy to child, payable in future, with maintenance generally : distinction, if less than the interest.
18. } On written agreement to pay by instalments, or at a
19. } day certain : not on shop debts, &c.
20. Refused till time of payment of legacy to a child on express maintenance, &c. with laches.
21. Not on portions, increased by the father's will, beyond maintenance expressed in the original portions.
22. For maintenance on legacy to child only.
23. On bond and judgment assigned to the Report, not beyond the penalty.
24. Generally not on legacy until time of payment. Exceptions. Legacy to child. Residue. Intent.
25. At  $4\frac{1}{2}$  per cent.
26. Not as discount beyond 5 per cent. by agreement for prompt payment on bankruptcy upon the custom of the trade.
27. By will on debts : not extended to simple contract.
28. On written undertaking to pay on day certain or demand.
29. } Not beyond the penalty of bond, except special cir-
30. } cumstances.
31. *West India*.
32. Usage of trade to include the current year in contract for credit.
33. Under devise on trust by demise, sale, &c. or rents, &c. to pay with all convenient speed after the decease, 4 per cent. from the death.
34. To tenant for life : whether from the death or a year after.
35. Legatees in *Jamaica* currency, living here, and assets and executors in both countries, not entitled to *Jamaica* interest.
36. On legacies from a year after the death on presumption, that the property is got in.
37. Whether on legacy to grand-child payable on contingency or at a future day, as to a child.
38. Whether on petition, where no direction in the decree.
39. Not on legacy to wife, as to a child, before payable.
40. Whether 5 per cent. on legacy out of a capital in trade.
41. Not on legacy to wife or natural child, as to a legitimate child from the death.
42. Under written contract, payable on demand or day certain.
43. 5 per cent. under contract to give notes.
44. Beyond penalty of bond on mortgage by surety.
1. Interest given in equity for a simple contract debt : as at law for every debt detained, either by the contract or in damages. - - - - -

2. Interest given against trustees and executors, keeping money in their hands in breach of trust. - - - I. 452
3. Where the question of interest is not reserved by the decree, it cannot be given on petition: the object of a petition being only to carry on what is directed by the decree. *Cruese v. Hunter*. - - - II. 157
4. Interest not given upon the confirmation of the Report upon demands liquidated by it, but not bearing interest in their nature; as legacies and arrears of annuities; though both legacies and annuities were charged upon land; and the annuities were not paid out of the rents and profits; as possession was taken by mortgagees; and though one of the annuities was the provision of a widow. - - - II. 157
5. In the case of a mortgage the whole sum liquidated by the Report carries interest. - - - II. 159
6. Under a judgment at law no interest subsequent to the judgment can be recovered: but a fresh action may be brought for it. - - - II. 162
7. Upon farther directions the Court may add to the decree, and may therefore give interest, though the question of interest was not reserved. - - - II. 164
8. Interest is computed by the Master's Report upon such debts only, as carry interest, according to the rate they carry; and upon farther directions subsequent interest is directed only on those, upon which the Report has already computed interest: but no interest is computed on simple contract debts by the Report or by order afterwards. - - - II. 165
9. A power to charge a sum in gross implies a power to give any rate of legal interest; and the rule of the Court to give 4 *per cent.* applies only, where no rate is specified by the party having power to fix it. *Lewis v. Freke*. - - - II. 507
10. The reason of the rule in *Chancery* to give interest at 4 *per cent.* only is, that money is generally to be had at that rate: but the rule is not invariable. - - - II. 511
11. Upon a bill by executors to have the assets administered no interest is to be allowed upon a judgment on assets *quando acciderint*. *Deschamps v. Vanneck*. - - - II. 716
12. No interest is allowed upon a judgment in an account before the Master, or in an action upon it. - - - II. 719
13. A legacy from an uncle to a niece, to be paid at twenty-one or marriage, does not carry interest before the time of payment. *Crickett v. Dolby*. - - - III. 10
14. Legacy from a parent to a child bears interest before the time of payment, and from the death of the testator; and is the only instance. - - - III. 13
15. Legacy payable at twenty-one; before which time the legatee dies: if interest is payable, his executor shall have the legacy immediately: if not, he must wait till

- |     |  |           |
|-----|--|-----------|
|     | the legatee would have been twenty-one; and cannot then have the interest. - - - - -   | Vol<br>II |
| 16. | A wife as well as a child is within the exception to the rule, that a legacy does not bear interest, till it is payable (a). - - - - -   | II        |
| 17. | Legacy from parent to child payable <i>in futuro</i> : if maintenance is given generally, it shall carry interest: but if an annual sum less than the interest is given for maintenance, the executor paying that shall have the rest. -   | II        |
| 18. | Interest allowed upon a written agreement to pay by instalments. <i>Parker v. Hutchinson.</i> - - - - -  | II        |
| 19. | Interest given at law upon a written undertaking to pay, or notes payable, on a day certain: not upon notes payable at a day uncertain, shop debts, &c. - - -  | II        |
| 20. | Upon the ground of an express maintenance and other indications of the intention the <i>Lord Chancellor</i> inclined to the opinion, that the rule for interest upon a legacy given by a parent to a child till the time of payment was not applicable: but the bill of the children was dismissed upon circumstances of acquiescence, laches, and the consequent difficulty of taking the accounts. <i>Mitchell v. Bower.</i> - - - - - | II        |
| 21. | Portions under a settlement for younger children were increased by the Will of the father: there being an express maintenance of <i>2 per cent.</i> upon the original portion, the rule for interest upon the legacies does not apply: but the Court continued the <i>2 per cent.</i> upon them. <i>Long v. Long.</i> - - - - -  | II        |
| 22. | Interest by way of maintenance upon a legacy in the case of parent and child only. - - - - -   | II        |
| 23. | Bond and judgment assigned: interest must be calculated to the date of the Report, so as not to exceed the penalty. <i>Sharpe v. Earl of Scarborough.</i> -  | II        |
| 24. | The general rule, that a legacy payable in future shall not carry interest before the time of payment, applies to a legacy to infants payable at twenty-one: the exceptions are the case of parent and child, the case of a residue, and where from other special circumstances an intention to give interest clearly appears. <i>Tyrrell v. Tyrrell.</i> - - - - -  | IV        |
| 25. | Interest given at <i>4½ per cent.</i> <i>Cox v. Chamberlain.</i> -   | IV        |
| 26. | Under an agreement to take off a discount above <i>5 per cent.</i> for prompt payment, though according to the custom of the trade, the creditor cannot upon bankruptcy charge more than <i>5 per cent.</i> : <i>Ex parte Aynsworth.</i> - - - - -   | IV        |
| 27. | A provision by Will for payment of interest of debts held not to extend to a debt by simple contract. <i>Tait v. Lord Northwick.</i> - - - - -   | IV        |

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(a) Over-ruled. See the note, Vol. III. page 17.

# INTEREST.

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28. A written undertaking to pay at a day certain, or on demand, as a promissory note, carries interest from the day, or the demand; as at law it is given by way of damages. *Upton v. Lord Ferrers.* - - - - - V. 801
29. Devise in trust to sell, and apply the money to and among such persons as the trustees in their discretion should think had or have any just or indisputable demand upon *A.* at his death, to each in equal degree and proportion according to the principal sum, as far as the money would extend; the securities to be delivered up: but the money to be given and received in no other manner than as voluntary bounty. The fund, being more than sufficient, is liable to interest of bonds to the extent of the penalties. *Aston v. Gregory.* - - - - - VI. 151
30. No interest beyond the penalty of a bond; except under special circumstances. *Clarke v. Seton.* - - - - - VI. 411
31. *West India* interest. - - - - - IX. 267
32. Upon a contract for eighteen months' credit, as to the usage of a trade to include the current year, *quære.* *Lord Courtenay v. Godschall.* - - - - - IX. 473
33. Devise upon trust, by demise, sale, or mortgage, or by rents and profits, to raise and pay with all convenient speed after the decease of the deviser a sum, and subject thereto upon other trusts. Interest decreed at 4 *per cent.* from the death. *Spurway v. Glynn.* - - - - - IX. 483
34. Interest to tenant for life: whether from the death of the testator, or a year afterwards. - - - - - IX. 553
35. Legacies in the currency of *Jamaica*; where the testator resided; assets and executors in both countries. The legatees, living in this country, not entitled to *Jamaica* interest. *Bourke v. Ricketts.* - - - - - X. 330
36. Interest upon legacies from a year after the death upon the presumption, that the property is got in by that time, and making interest. - - - - - X. 333
37. Whether a legacy to a grand-child, payable upon a contingency, or at a future day, shall carry interest, as in the case of a child, *quære.* - - - - - XII. 23
38. Whether interest can be claimed by petition, the decree containing no direction as to interest, *quære.* *Bruere v. Pemberton.* - - - - - XII. 386
39. No exception in favour of a wife, as for a child, to the rule, that a legacy does not bear interest before it is payable. *Stent v. Robinson.* - - - - - XII. 461
40. Claim of 5 *per cent.* upon a legacy, as being given out of a capital in trade, not decided. - - - - - XII. 461
41. Interest upon a legacy to a wife or a natural child not allowed from testator's death; as it is in favour of a legitimate child by way of maintenance. *Lowndes v. Lowndes.* - - - - - XV. 301
42. Under a written contract for a sum of money, payable on demand, or a day certain, interest is in equity, as at

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law, payable from the time of demand made, or from the fixed period of payment. <i>Lowndes v. Collens.</i>	XVII
43. Interest at 5 per cent. under a contract to give promissory notes.	XVII
44. Interest beyond the penalty of a bond upon a mortgage for the same debt; though by a surety. <i>Clarke v. Lord Abingdon.</i>	XVII

COMPOUND.

COMPOUND.—1. Not given.	
2. Not by antecedent contract; but accounts may be settled half-yearly on that principle. Exception as to real securities.	
1. Interest upon interest not given. <i>Waring v. Cunliffe.</i>	I
2. Though compound interest cannot be taken under an antecedent contract, accounts may be settled, even half-yearly, upon that principle. Exception as to real securities. <i>Ex parte Bevan.</i>	IX
See Annuity 2. 3. Apportionment 5. Arbitration 7. Assets 46. Bankrupt 1. (Assignee 4. 37.) (Mortgage 1.) (Surplus 1. 2. 3. 6.) Charge 7. Contract 10. 47. Executor 2. 14. 17. 24. 42. 43. 49. 51. 59. 64. Fraud 12. Grandchild 1. Insurable Interest 3. Legacy 1. 27. 30. 36. 48. Lunacy 2. Practice 49. 56. 260. 304. Principal and Agent 11. 20. Principal and Surety 5. Purchase 1. 20. 36. Receiver 1. 11. Residue 6. Reversion 1. Trust 17. 18. 46. 63. Vesting 28. Will 61. 182.	

INTEREST, ABSOLUTE OR FOR LIFE.

1. For life not enlarged by discretionary power to advance.	
2. Absolute under trust for the use and benefit of A. and in case of her death over.	
1. Trust by Will as to the residue of real and personal estate for a nephew and his heirs, to pay him the interest for life, with power to the trustees, in case they should see it would be for his benefit to advance him, when it may be in their power, any part of the principal for his advancement in life, that they will not withhold such assistance as they may deem necessary: but, in case no part should be advanced, the residue to be divided among the nephew's issue; with a limitation over, if he should leave no issue. The nephew is entitled, not to the absolute property, but for life only; and, no advancement having been made, an inquiry was directed, whether his circumstances required advancement. <i>Robinson v. Cleator.</i>	XV
2. Residuary bequest in trust for the use and benefit of A. and in case of her death to be equally divided between the children of B. Payment decreed to the executor of A. as having taken the absolute interest. <i>Ommaney v. Bevan.</i>	XVII

**INTEREST, CONTINGENT.**

*See Contingent Interest.*

**INTEREST, EQUITABLE.**

*See Assignment.*

**INTEREST, EXECUTORY.**

*See Perpetuity.*

**INTEREST, VESTED.**

*See Vesting 57.*

**INTERESTED WITNESS.**

*See Evidence.*

**INTESTACY.**

*See Assets 9. London, Custom of. Representative.*

**INTERPLEADER.**

1. Costs as between defendants.
2. By banker, served with attachments upon a deposit, and held to bail by the owner, in prison under actions as partner in an insolvent house.
3. Affidavits read, as upon waste.
4. Collusion not presumed, nor can counter-affidavit prevail, against plaintiff's affidavit.
5. On a claim.
6. Not by tenant on notice of ejectment by a stranger under title adverse to the landlord. Collusion.
7. Where two claims.
8. Bill never suggests a case.
9. By tenant: two must claim the same rent in privity of tenure and contract.
10. } All costs against the defendant failing; and plaintiff's
11. } lien on the fund.
12. On notice of various claims.
13. } Various modes of disposing of the questions between
14. } defendants.
15. By tenant against two claims of rent.
16. On attorney's claim of lien on damages.
17. By debtor sued by his creditor, a bankrupt, contesting the commission.
18. On colour of title given to a stranger.!
19. Injunction not dissolved on one answer only: plaintiff's delay a special ground.
1. Costs of plaintiff in interpleading bill and of defendant, who succeeded at law, ordered to be paid by the defendant, who failed. *Dowson v. Hardcastle.* - -
2. A banker, with whom property was deposited for safe custody, refused to deliver it to the owner, in prison under actions brought against him as partner in an insolvent mercantile house: the banker was then served with attachments by the plaintiffs in those actions, and held to bail in trover by the owner: Held, that he was entitled to relief upon bill of interpleader, but need



- not have come into equity; as at law he would have been discharged on common bail upon bringing the deposit into Court, and proceedings in the action would have been stayed, till the attachments were disposed of by the owner of the property in the name of the banker. *Langston v. Boylston.* - - - - - I
3. In support of motion for injunction on interpleading bill, affidavits of the facts may be read; as it is exactly on the footing of waste. - - - - - I
4. Collusion not to be presumed against the affidavit of the plaintiff in interpleading bill: nor can counter-affidavit prevail against it. - - - - - I
5. A claim is a ground of interpleader. - - - - - I
6. Tenant cannot file a bill of interpleader against his landlord on notice of ejectment by a stranger under a title adverse to that of the landlord. On suspicion of collusion an inquiry into the circumstances was directed; and the Report confirming the fraud, the bill was dismissed with costs to the landlord, as between attorney and client, to be paid by the plaintiff and his solicitor; the latter to shew cause, why he should not be struck off the Roll. *Dungey v. Angove.* - - - - - I
7. Bill of interpleader is, where two persons claim of a third the same debt or the same duty. - - - - - I
8. An interpleading bill never suggests a case. - - - - - I
9. To support a bill of interpleader by a tenant two persons must claim the same rent in privity of tenure and contract; as in the case of mortgagor and mortgagee, trustee and *cestui que trust*, &c. - - - - - I
10. Upon a bill of interpleader the defendant, who made it necessary, was ordered to pay all the costs; and the plaintiff has a lien for his costs upon the fund paid into Court. *Aldridge v. Mesner.* - - - - - V
11. Costs as between the defendants to an interpleading bill. *Cowan v. Williams.* - - - - - IX
12. Interpleader upon notice of a variety of claims by persons, among whom an entire charge upon an estate was split; though no suit instituted; and but one legal right of entry: the principle being, not merely that the payment cannot be safely made, but that the party, entitled to be discharged by a single payment, should not be harassed by a number of suits. *Angell v. Hadden.* - - - - - XV
13. Questions arising on bills of interpleader are disposed of in various modes, according to the nature of the question, and the manner, in which it is brought before the Court. - - - - - XVI
14. Interpleading bill is considered as putting the defendants to contest their respective claims; as a bill by an executor or trustee to obtain the direction of the Court upon the adverse claims of the defendants. Therefore at the hearing, if the question between the defendants

## INTERPLEADER.—IRREPARABLE MISCHIEF. 327

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is ripe for decision, the Court decides it; and, if not ripe for decision, directs an action, or an issue, or a reference to the Master; as best suited to the nature of the case. Accordingly upon objections under the Annuity Act a reference was directed, whether proper memorials were enrolled, and to state the priorities of such as were valid. - - - - -

XVI. 202

15. Interpleading bill by a tenant to ascertain, to which of two claimants he was to pay his rent. The one establishing his title by evidence, the other making default at the hearing, payment decreed to the former, and a perpetual injunction against the other. - -

XVI. 203

16. Interpleader on an attorney's claim of lien upon a sum awarded as damages under a judgment obtained by the client against the plaintiff. ——— v. *Bolton*. - -

XVIII. 292

17. Injunction upon an interpleading bill against bankrupts and their assignees by a debtor to the estate, sued by the bankrupts with the view of indirectly contesting the Commission. *Lowndes v. Cornford*. - - - -

XVIII. 299

18. Interpleader upon colour of title given to a stranger. *East India Company v. Edwards*. - - - -

XVIII. 376

19. Injunction not dissolved as of course on one answer only coming in to interpleading bill: but plaintiff's delay to get in the other answers is a special ground for application to dissolve, or to have the money out of Court. *Hyde v. Warren*. - - - - -

XIX. 322

See *Landlord and Tenant* 15. 37. *Trust* 122.

## INTERROGATORIES.

See *Pleading* 36. *Practice* 42. 166. 368. 369. 391. 394.

## INTOXICATION.

See *Contract* 103.

## INVENTORY.

See *Baron and Feme* 96. *Will* 289.

## IRELAND.

See *Infant* 10. *King's Printer* 1. *Mortgage* 45. *Ne exeat Regno* 24. *Peer* 1.

## IRISH PEER.

See *Peer* 1.

## IRREGULARITY.

See *Purchase* 27.

## IRRELEVANCY.

See *Scandal* 6. 7. 8.

## IRRELIGION.

See *Parent and Child* 6.

## IRREPARABLE MISCHIEF.

See *Appeal* 20. *Injunction* 60.

ISSUE.

1. Taking as purchasers.	
2. }	
3. }	
4. }	
5. }	
6. }	
Includes descendants generally.	
1. Heirs or issue, where intended to take distributively, must take as purchasers.	I
2. Under a legacy to the issue of <i>A.</i> all descendants are entitled; and take <i>per capita</i> as joint-tenants. <i>Davenport v. Hanbury.</i>	III
3. Grand-children entitled under a bequest to issue. <i>Freeman v. Parsley.</i>	III
4. Though the word "issue" will comprehend all descendants, upon the particular construction of this Will it was confined to children. <i>Sibley v. Perry.</i>	VII
5. Grand-children as well as children, entitled under the word "issue." <i>Bernard v. Montague.</i>	XI. 5
6. The word "issue," unconfined by any indication of intention, includes all descendants. Intention necessary to restrain it to children. Grand-children therefore entitled with children <i>per capita.</i> <i>Leigh v. Norbury.</i>	XIII
See <i>Jurisdiction</i> 30. <i>New Trial</i> 8. <i>Power</i> 1. <i>Practice</i> 255. <i>Representative</i> 11. <i>Tithe</i> 9.	

ISSUE AT LAW.

1. New trial on evidence kept back refused; though the verdict very dissatisfactory.	
2. Original answer not sent down to trial until refusal of office copy.	
3. Conclusive, or for satisfaction of the Court distinguished.	
1. After a verdict on issue directed new trial on account of having farther evidence to produce refused; there being no fraud or surprise, but the evidence having been kept back by the party applying: though the Court was dissatisfied with the verdict. <i>Standen v. Edwards.</i>	I
2. On an issue from Chancery original answer not sent down to the trial, whether between same parties or not, till after refusal of the office copy as evidence. <i>Anonymous.</i>	I
3. Distinction between taking the opinion of a Court of Law conclusively, and directing an issue for the satisfaction of this Court, reserving to itself the review of what passed at law with reference to the record in equity.	XIX
See <i>Devise</i> 43. 44. <i>Donatio mortis causá</i> 1. <i>Estate (Tail</i> 1.) <i>Practice</i> 2.	

ISSUE DEVISAVIT VEL NON.

See *Will* 284. 286.

ISSUE, DYING WITHOUT.

See *Perpetuity* 6. 7.

ISSUE IN TAIL.

See *Election* 22. *Tenant in Tail*.

ITALIAN OPERA.

See *Patent* 1. *Theatre* 2. 3.

JAMAICA INTEREST.

See *Interest* 35. *Limitation (Time)* 4. *West Indies* 2. 3. *Will* 182.

JEWISH SYNAGOGUE.

See *Charity* 85.

JOINT AND SEPARATE COMMISSION.

See *Bankrupt (Certificate)* 21. (*Partner* 14.)

JOINT AND SEPARATE CREDITOR.

See *Bankrupt*.

JOINT AUTHORITY.

See *Power* 56.

JOINT BOND.

See *Bond* 3. 4. 8. 9. 10.

JOINT COMMISSION.

See *Bankrupt (Assignee)* 40. *Partner* 20.

JOINT CREDITOR.

1. By simple contract may go against assets of deceased partner: but cannot before Account retain.
2. Under joint covenant each liable for the whole.
1. A joint creditor by simple contract may go against the assets of a deceased partner; but cannot before the account retain separate property of that partner in his possession. *Stephenson v. Chiswell*. - - -
2. Under a joint covenant to raise a sum of money the whole may be recovered from either. - - -

III. 566

V. 717

See *Assets* 41. *Bankrupt* 5. 6. 13. 15. 16. 28. 55. (*Assignee* 30. 34. 36. 39.) (*Dividend* 2.) (*Partner* 2. 7. 13. 18.) (*Petitioning Creditor* 1. 15.) (*Proof* 20. 34. 42. 48.) (*Set-off* 1.) *Creditor. Execution* 3. *Partner* 1. 48. 58. *Set-off* 1.

JOINT INSURANCE.

See *Contract (Illegal)* 4.)

JOINT INTEREST.

See *Joint Tenant. Practice* 378.

JOINT JUDGMENT.

See *Execution* 1.

**JOINT PROPERTY.**  
See *Bankrupt* (Partner 18.)

**JOINT-TENANT.**

1. Covenant to sell severs in Equity.
  2. } Unless severance expressed or implied.
  3. }
  4. Though a previous disposition of the interest equally.
  5. For life: words of severance confined to subsequent limitations.
  6. Under bequest to two. Inference of severance from conduct.
  7. Co-heirs, as purchasers under devise.
  8. By Will without words of severance.
  9. By joint purchase in fee with equal payments.
  10. Words importing both joint interest and in common, construed by the intention.
  11. Intention of severance not sufficiently clear.
1. Covenant by joint-tenant to sell severs the joint-tenancy in equity, though not at law. - - - - -
  2. Notwithstanding the leaning of law to a tenancy in common, an interest given to two or more either by way of legacy or otherwise is joint, unless there are words of severance, as "equally among," &c. or an inference of that sort arises in equity from the nature of the transaction; as in partnerships, a joint mortgage, &c. *Morley v. Bird*. - - - - -
  3. Bequest to two without words of severance: they take jointly. *Stuart v. Bruce*. - - - - -
  4. A legacy or residue, bequeathed to two without words of severance, is a joint interest; and cannot be taken in common under the effect of a previous disposition of the interest with words of severance, viz. "to be equally divided." *Crooke v. De Vandes*. - - - - -
  5. Joint-tenancy for life: the words of severance being confined to the subsequent limitations. *Folkes v. Western*.
  6. Residue bequeathed to two: they take a joint interest. An agreement for severance as to the whole may be inferred from their conduct; dividing, as the property was received. *Crooke v. De Vandes*. - - - - -
  7. Devise and bequest of leasehold, freehold, and copyhold, estates to trustees, their heirs, executors, &c.; upon trust to sell; and pay debts, &c.; and after payment thereof to pay and apply the rents, &c. to *A.* for life; and after his decease devising and bequeathing to the heir or heirs at law of *B.* and the heirs, executors, &c. of such heir or heirs; to whom the trustees were directed to convey and assign accordingly. Co-heiresses of *B.* being also the co-heiresses of the devisor, take, not as by descent, but as joint-tenants, by purchase to survivorship. *Singine*

III. 257

III. 62

III. 63

IX. 1

IX. 4

XI.

## JOINT-TENANT, — JUDGMENT VACATED. 331

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|--|-----------|
| 8. Joint-tenancy under a bequest of personal property to more than one without words of severance. - -   | XV. 371   |
| 9. A joint purchase by two, to them and their heirs, with equal payments, a joint-tenancy; and therefore survivorship. <i>Aveling v. Knipe.</i> - - - -  | XIX. 441  |
| 10. Under a bequest over after an interest for life by words importing both a joint interest and a tenancy in common, as to three "or the survivor share and share alike," the period, to which the survivorship relates, depends, not on any technical words, but on the apparent intention, collected from the particular disposition or the general context. <i>Newton v. Ayscough.</i> - | XIX. 534  |
| 11. Survivorship by words in a Will creating a joint interest: the intention of severance not being sufficiently clear. <i>Whitmore v. Trelawny.</i> - - - -   | VI. 129   |
| See <i>Executor</i> 54. <i>Issue</i> 2. <i>Partner</i> 2. <i>Vesting</i> 33. 36. <i>Will</i> 158.  |           |

### JOINTURE.

See *Baron and Feme* (*Adultery* 1.) *Deed* 1.

## JOURNALS OF THE HOUSE OF LORDS.

See *Privilege* 1.

## JUDGMENT.

- |   |        |
|---|--------|
| 1. In <i>Jamaica</i> . Bill for satisfaction from rents, &c. must shew, that it cannot affect the land.   |        |
| 2. No equity from prior judgments.  |        |
| 3. May be vacated, while in paper.  |        |
| 4. The record and oath of the debt sufficient before the Master without <i>scire facias</i> .   |        |
| 1. Creditor by judgment in <i>Jamaica</i> , filing bill here for satisfaction from rents and profits remitted and to be remitted, must shew his judgment to differ from judgment here; so that he cannot affect the land. <i>Cathcart v. Lewis.</i> - - - - | I. 463 |
| 2. No equity for judgment creditor, because there are prior judgments. - - - -  | I. 464 |
| 3. A judgment may be vacated, while in paper; but not, when made a record. - - - -  | V. 705 |
| 4. Though a judgment creditor cannot stir at law without a <i>scire facias</i> , before the Master it is sufficient to produce the record of the judgment, and swear, the debt is due.  | XI. 36 |
| See <i>Creditor</i> 1. <i>Creditor and Debtor</i> 6. <i>Decree</i> 2. 3. 5. 6. <i>Execution</i> 1. 3. <i>Fraud</i> 11. <i>Interest</i> 6. 11. 12. <i>Mortgage</i> ( <i>Tacking</i> 2.) <i>Practice</i> 177. ( <i>Party</i> 6.)                              |        |

### JUDGMENT CREDITOR.

See *Assets* (*Marshalling* 1.) *Judgment.* *Tacking* 7.

## JUDGMENT VACATED.

See *Decree* 4.

## JURISDICTION.

1. Concurrent, if remedy at law doubtful or difficult.
2. Political treaty between foreign state and subjects of this country, acting as independent state under Charter and Act of Parliament not a subject of municipal jurisdiction.
3. Account on mere right of entry, and receipt of rents admitted.
4. Not for probate of instrument not affecting the personal estate.
5. On lost instrument.
6. Relief without trial on clear right.
7. Bill retained with liberty to bring action.
8. Damages not increased on suggestion of mistake at law.
9. In Chancery on tithes in *London*.
10. Not for purchase-money on eviction.
11. Not to compel from a party discovery of agreement for illicit cohabitation.
12. Not on confiscation by foreign country.
13. Suit by foreign Sovereign.
14. On question of partnership arising in bankruptcy.
15. Not to supersede writ *de excommunicato capiendo* for not appearing to citation by creditor, disputing the debt on equitable grounds.
16. On lost bond: though *profert* dispensed with.
17. Not on note void for want of stamp.
18. No action by husband for wife's legacy.
19. Instruments delivered up on legal objection rarely, and on terms.
20. Not for account of fees under a grant to the bailiff of *London*, of the execution, &c. of process in *Southwark*.
21. Account of metage, &c., of oysters at *Billingsgate*.
22. For contribution among partners; though now enforced at law.
23. Of law and equity by different Courts.
24. For equitable relief on legal right. Distinction, when the subject is matter of law.
25. To preserve property during litigation in the Ecclesiastical Court.
26. In Equity on fact formerly more frequent.
27. } Not destroyed by dispensing with *profert*, &c. at law.
28. }
29. Concurrent; though the instrument might be the subject of an action.
30. On facts without an issue.
31. A judicial Court cannot notice foreign government, not acknowledged; which is matter of notoriety.
32. Not on omission of defence at law.
33. Not on loss of half a promissory note, which had been cut.
34. For delivering up a void deed, a cloud on the title.
35. Distinction between delivering up, and making effectual, an instrument.
36. Of Commissioners under Inclosing Act exceeded makes them liable.



# JURISDICTION.

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37. To enjoin or regulate proceedings on indictment not generally, but under circumstances.
  38. Distinction between legal and equitable on fraud.
  39. Modern extension of legal.
  40. Record in the *Petty-bag* removed to the *King's Bench*: practice as to discharge from process supersedeable.
- 
1. Where there may be remedy at law, yet if doubtful or difficult, equity will hold jurisdiction. *Weymouth v. Boyer.* - - - - - I. 417
  2. Political treaties between a foreign state and subjects of the Crown of *Great Britain*, acting as an independent state under powers granted by Charter and Act of Parliament, are not a subject of municipal jurisdiction; therefore a bill founded on such treaties by the Nabob of *Arcot* against the *East India Company* was dismissed. *Nabob of the Carnatic v. East India Company.* II. 56
  3. Account would be decreed upon a bill on a mere right of entry, if the defendant admitted the title and receipt of the rents and profits. - - - - - II. 128
  4. The Ecclesiastical Court acts without jurisdiction in granting probate of an instrument, which does not affect the personal estate. - - - - - II. 230
  5. The loss of an instrument with the usual affidavit gives a right to relief; as upon a bond to a decree for payment: so of a deed. - - - - - II. 461
  6. Plaintiff prayed a discovery, injunction, and delivery of a bill of exchange: upon the answers and evidence the right being clear, the Court refused an opportunity of trying it at law; and decreed an immediate delivery. *Newman v. Milner.* - - - - - II. 483
  7. Bill for a legal demand retained with liberty to bring an action; the assistance of the Court being required on equitable circumstances. *Stevens v. Praed.* - - - II. 519
  8. Upon equity reserved the Court refused to increase damages on suggestion, that interest was omitted at law through mistake, on the supposition that it would be given in equity. - - - - - II. 519
  9. Notwithstanding the Statute and decree 37 Hen. 8. c. 12, the Court of Chancery has jurisdiction upon the subject of tithes in *London*. An account was decreed according to the improved rent. Another defendant setting forth his lease at a low rent and a fine, and alleging by answer, that he had never heard of any greater rent being paid, there being no evidence against it, was held liable only according to that rent. *Canons of St. Paul's v. Crickett.* - - - - - II. 563
  10. No equity upon eviction to recover purchase-money. - III. 235
  1. After verdict upon a bond against the obligor, bill to have it delivered up, charging the consideration to have been an agreement by the defendant to cohabit with the plaintiff as his wife; and that she had lived in a state

	of adultery and incontinence with various persons, and praying a discovery: demurrer allowed. <i>Franco v. Bolton.</i> - - - - -	Vol. III.
12.	Confiscation by a foreign country is a subject of political, not municipal, discussion. It cannot operate upon property in this country. - - - - -	III.
13.	<i>Quære</i> , whether a foreign Sovereign can sue in a municipal Court of this country (a). - - - - -	III.
14.	A question arising in equity, that prevents the assertion of a legal right, does not alter the tribunal. Therefore the Court will not determine a question of partnership in the event of a bankruptcy any more than of a death, or than it would determine a claim as heir, without a trial at law; unless perfectly satisfied; though the evidence is all in support of the claim. The Court expressed great doubt, whether, the stock in trade being in the possession of the bankrupt solely, the claim of partnership could be sustained upon the Stat. 21 James I. c. 19. s. 10, 11. <i>Binford v. Dommett.</i> - - - - -	IV.
15.	Executrix, in custody under a writ <i>de excommunicato capiendo</i> for not appearing to a citation by a creditor to exhibit an inventory, moved for a <i>supersedeas</i> , disputing the debt upon equitable grounds: motion refused. <i>The King v. Blatch.</i> - - - - -	V.
16.	The jurisdiction, assumed by Courts of Law, dispensing with <i>profert</i> in the case of a lost bond, does not oust the equitable jurisdiction. - - - - -	V.
17.	No relief in equity upon a promissory note, void at law for want of a stamp. - - - - -	V.
18.	An action does not now lie by a husband for a legacy in right of his wife. - - - - -	V.
19.	The cases, in which equity orders instruments, to which there is a legal objection, to be delivered up, are rare; and the relief on terms. - - - - -	V.
20.	Bill by the bailiff of the city of <i>London</i> , entitled under a grant of Edward 6, of the execution and return of all process in the borough of <i>Southwark</i> , against the sheriff of <i>Surrey</i> for an account of the fees dismissed. <i>Lewes v. Sutton.</i> - - - - -	V.
21.	Upon a bill by the deputy meters of oysters at <i>Billingsgate</i> , appointed by the city of <i>London</i> , the allowance claimed for metage, &c. of the cargoes brought to market being established as reasonable by the verdict upon an issue, an account and payment of the arrears was decreed. <i>Milbourn v. Fisher.</i> - - - - -	V. 61
22.	Though contribution among partners is now enforced at law, the jurisdiction of Courts of Equity is not ousted; and therefore, though the bill was dismissed, the object	

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(a) There is a recent instance (1831) *The King of Spain v. Hullett.*

# JURISDICTION.

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- having been obtained in an action directed, the Court would not dismiss it with costs. *Wright v. Hunter.* - V. 792
23. Distinction in the administration of law and equity in this country by different Courts; and consequences of that distinction. - VI. 39
24. The cases, where the bill is retained, that there may be a trial at law, are, where it is necessary to establish the legal right, in order to found the equitable relief; but, where the subject appeared to be matter of law, the bill was dismissed. *Walton v. Law.* - VI. 150
25. Injunction restraining a transfer, and a Receiver appointed, to preserve the property during a litigation in the Ecclesiastical Court upon the Will. *King v. King.* VI. 172
26. Courts of Equity formerly more in the habit of deciding questions of fact than lately. - VI. 671
27. The ancient jurisdiction of this Court not destroyed by the assumed jurisdiction of Courts of Law, dispensing with *profert*, and permitting averment of a consideration not in the deed. - VII. 49
28. The extension of the jurisdiction of Courts of Law in modern times to cases, that formerly were subjects of equitable jurisdiction exclusively, has not destroyed the jurisdiction of Courts of Equity. - VII. 249
29. Equitable jurisdiction to grant an injunction, or order an instrument to be delivered; though it might be the subject of an action. Discretionary, whether an issue or an action shall be directed or permitted. *Jervis v. White.* - VII. 413
30. Right of this Court, to be exercised very tenderly, of deciding upon facts without an issue. - IX. 168
31. A judicial Court cannot take notice of a foreign government, not acknowledged by the government of the country, in which that Court sits; and the fact of acknowledgment is matter of public notoriety. *City of Berne v. The Bank.* - IX. 347
32. No relief in equity upon the omission of a defence at law. XIV. 31
33. Bill for payment of a promissory note, which had been cut in two parts, one being produced, and the other alleged to be lost, and offering an indemnity, dismissed; as, proving the loss, an action might be maintained. *Mossop v. Eadon.* - XVI. 430
34. Equitable jurisdiction to order a deed, forming a cloud upon a title, to be delivered up though void at law. Accordingly a demurrer to a bill, to have a deed fraudulent and void, as in contemplation of bankruptcy, delivered up, was over-ruled. *Hayward v. Dimsdale.* - XVII. 211
35. Distinction between directing an instrument to be delivered up and making it effectual in equity. - XVII. 167
36. Commissioners under an inclosing act liable to suits at law and in equity for acts, not according to their authority. Demurrer to a bill upon that principle, charging,

not collusion expressly, but that they were proceeding to divide unjustly, and not according to their authority, viz. upon the information of a tenant of the plaintiff's manor, being owner of the adjoining one; and the boundaries, and documents being intermixed, overruled. *Speer v. Crawler*. - - - - -

XVII

37. No general jurisdiction in equity to enjoin or regulate proceedings upon indictment: but circumstances may give it; as, where prosecuted by relators in an information or plaintiffs, they are subject to control by order personally affecting them; but not the defendants. -

XVIII

38. Distinction between legal and equitable jurisdiction upon fraud; which at law must be proved, not presumed; and the equitable jurisdiction may be exercised upon an instrument unduly obtained, where a Court of Law could not enter into the question. - - - - -

XVIII

39. Extension of legal jurisdiction to subjects formerly not dealt with at law; marriage-brocage, for instance. -

XVIII

40. After issue joined in an action in the *Petty Bag*, the record being transferred to the *King's Bench*, the defendant, having judgment against him, surrendered in discharge of his bail; and was by an order in the *Petty Bag* committed to the *Fleet*. The process becoming supersedable by omitting to charge him in execution, an order of the *King's Bench* on *Habeas Corpus* was required for his discharge; upon which an order was also made in the *Petty Bag*. *Fraxer v. Lloyd*. -

XIX

See Account. Annuity. Arbitration 14. 15. Assets 18. Bankrupt (Mortgage 2.) Charity 72. 73. Chattel 1. 2. 3. Consideration 1. Contract 13. 94. 102. (Specific Performance 64.) Dower 1. Executor 97. Fine 5. Foreign State. Fraud 19. Infant 23. Injunction 60. 61. Issue 3. Lunacy 19. 62. 64. 66. Marriage 2. Nuisance 1. 3. Parent and Child 4. 6. 7. Partner 16. Partition 2. Pleading 18. 19. Policy, Public, 1. Power 20. (Of Attorney 1.) Practice 123. Prize 2. 4. 6. Reversion 2. Scandal 10. Sewers 1. Theatre 4. Trust 28. 35. Visitor 1. Ward of Court 5. West Indies 1.

### JUST ALLOWANCES.

See Practice 355.

### KEEPER OF THE GREAT SEAL.

See Lunacy 62. 64. 66.

### KIN, NEXT OF.

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See Trust 113.

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KING.

See *Bankrupt (Crown)*. *Charity* 29. *Corporation* 2.  
*Extent*. *Lunacy* 62. 63. 66. *Ne exeat Regno* 22. *Pa-*  
*tent* 1. *Practice* 88. 89. *Prerogative*. *Prize* 4.

KING'S BENCH, COURT OF.

See *Mine* 2. *Practice* 257.

KING'S PRINTER.

1. Right to print the statutes for *Ireland* since the Union.
- Bill by the King's Printer in *Ireland* to establish his right to print and distribute the copies of the statutes for *Ireland* under the order of the King upon the resolutions of both Houses of Parliament of the United Kingdom, and for an account against the King's printer in *England* in that respect, dismissed. *Grierson v. Eyre*. - - - - -

IX. 341

LACHES.

1. Plaintiffs not excused by defendant's infancy.
2. Raises presumption at law against established claims.
3. Gross of creditors not relieved.
4. Excused: the right but lately discovered.
5. Bar in equity: except fraud.
6. Presumed satisfaction of legacy.
7. In appealing prevents the effect of reversal.
8. Admits every fair presumption.
- (a)
10. In renewing lease.
11. Not applied to a large body of creditors.
12. Of residuary legatee of mortgagee, claiming against the heir in possession.
13. In redeeming mortgage.
14. In claiming account of captures at sea.
15. Prevents specific performance.
16. In prosecuting a claim.
17. Decree to dismiss by default, enrolled.
18. } Effect of time, not as a bar, but as evidence.
19. }
20. As to the Annuity Act.
21. In prosecuting decree.
22. Binds infant suitor.
23. Analogy to the Statute of Limitations.
24. Of legatee under mistake of executor not binding.
- Infancy of defendant no excuse for plaintiff's delay. - II. 12
- At law length of time raises presumption against claims the most solemnly established. - - - - - II. 13

(a) No. 9, omitted by mistake.

II.

II. 273. 58

II. 280

II. 280

II. 589

3. Creditors are not relieved in equity after gross laches : therefore where a creditor seven years after coming of age filed a bill to obtain the benefit of a decree to account, and after answer took no step for thirty-three years, and then filed another bill against residuary legatees of a party, whose assets were distributed with notice to the plaintiff, and against other representatives, the bill was dismissed upon the laches only ; though the question of satisfaction was doubtful. *Hercy v. Dinwoody.* - - - - -
4. Testator gave the residue of his personal estate to his executors for their own use and benefit : afterwards by a codicil he directed them to dispose of it in charities ; and part was accordingly applied in founding a school. Thirty-five years after the testator's death, all the next of kin and the acting trustee being dead, a bill was filed by the representative of one of the next of kin on the ground, that part of the personal estate was secured by mortgage ; therefore as to that the charitable bequest was void, and that the right of the next of kin was but lately discovered : the bill therefore prayed an account of the personal estate, and that the charitable bequest of what was out on mortgage should be declared void, and that it should result to the next of kin : Held, that by the codicil the executors were trustees of the whole, and could not claim for themselves ; that at all events the next of kin could not recal what had been laid out ; that the length of time alone was not sufficient to raise a presumption, that they knew their right, and released it or acquiesced ; therefore an account was decreed, but with special inquiry into all the circumstances, and whether the next of kin released, assigned, or in any manner gave up, their right. Upon the Report, the special circumstances affording no presumption of a release, an issue being declined, the accounts being clear, the trustee not being called on to refund what had been applied, and the widow being barred by the will, or her right of election having become impracticable, so much of the personal residue bequeathed to the charity, as was secured on mortgage, was notwithstanding the length of time decreed to the next of kin with interest from the filing of the bill. *Pickering v. Lord Stamford.* - - - - -
5. Length of time may bar in equity : twenty years' possession bars an equity of redemption : but no time can cover a fraud. - - - - -
6. After thirty-five years a legacy would be barred on presumption of satisfaction. - - - - -
7. Executor pays debts with money received under a decree, which is reversed : he must refund : otherwise, if the appeal is delayed. - - - - -

# LACHES.

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Every fair presumption is to be made against a stale demand. - - - - -	II.	583
Laches in applying to renew a lease. <i>Eaton v. Lyon.</i> -	III.	690
Laches does not apply to a large body of creditors. <i>Whichcote v. Lawrence.</i> - - - - -	III.	740
Residuary legatee, having been admitted to a copyhold estate, was in possession above nineteen years; when the heir obtained possession by ejectment. After acquiescence for nine years the residuary legatee filed a bill claiming the estate, as having been a redeemable interest in the testator; and, having been treated as such, it was so decreed. An account was directed of the money expended in repairs, &c.; and inquiries as to incumbrances; the Court inclining strongly to support the acts of the heir, while in possession. <i>Hardy v. Reeves.</i> - - - - -	IV.	466
Demurrer on the ground of length of time to a bill for redemption of a mortgage is good. - - - - -	IV.	479
Bill for an account of the produce of the captures by the <i>Royal Family</i> privateers of <i>Bristol</i> dismissed on the ground of laches: the original bill having been filed in 1749: but the length of time cannot be pleaded in bar. <i>Pearson v. Belchier.</i> - - - - -	IV.	627
Specific performance refused on the laches and trifling conduct of the plaintiff; the contract being for a sale to the plaintiff under a bankruptcy of a reversionary interest for life; which in the interval fell into possession. The defendants having also been in some degree remiss, the bill was dismissed without costs upon delivering up the agreement. <i>Spurrier v. Hancock.</i> -	IV.	667
Bill against the devisee and personal representatives, on the ground of an election by the testatrix to take under a Will, dismissed with costs, on the conduct of the plaintiff; who eighteen years ago had compromised a suit instituted by him upon the subject; in consequence of which the right to compel an election, depending on a doubtful question on the Will, was not ascertained; and the party, having possession under the Will during her life, had disposed of her estate real and personal by Will. <i>Yate v. Mosely.</i> - - - - -	V.	480
The Court refused to vacate the enrolment of a decree, dismissing the bill with costs by default; and afterwards upon a new bill for the same purpose granted a motion for time to answer till a month after payment of the costs of the other cause; adopting the practice at law. <i>Pickett v. Loggon.</i> - - - - -	V.	702
Effect of length of time, not as a bar to relief against fraud, but by way of evidence. - - - - -	XII.	374

(a) No. 9, omitted by mistake.



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| 19. Effect of length of time, as evidence, in the instance of incorporeal hereditaments. - - - - -  | XII. 377  |
| 20. Effect of laches with reference to the Annuity Act. -   | XII. 378  |
| 21. The Court refused upon petition or motion to prosecute an inquiry, directed by a decree many years ago, but never pursued; the party applying being born some years after the decree; only two months old at the date of the general report; and made a party some years afterwards, but several years before the application. <i>Lord Shipbrooke v. Lord Hinchinbrook.</i> - | XIII. 387 |
| 22. Infant suitor bound by laches. - - - - -  | XIII. 396 |
| 23. Effect of length of time at law by analogy to the Statute of Limitations. - - - - -   | XIII. 396 |
| 24. Right of legatee not bound by mere acquiescence under the mistaken construction of the executor. <i>Newton v. Ayscough.</i> - - - - -   | XIX. 534  |

See *Account* (Limited 2.) (Settled 1.) *Bankrupt* 34. (Sunderpurseding 4.) *Bond* 7. *Charity* 18. *Contract* 21. 22. 28. 29. 85. (*Specific Performance* 4. 33. 36. 59.) *Corporation* 6. *Costs.* *Election* 35. *Executor* 84. *Forfeiture* 4. *Fraud* 25. 41. 42. *Guardian and Ward* 4. *Injunction* 50. *Interest* 20. *Landlord and Tenant* 4. *Legacy* 1. *Limitation* (Time 16. 17. 18.) *Mortgage* 2. 4. 5. 20. 33. 56. *Parent and Child.* *Partner* 26. *Pleading* 18. *Presumption* 2. 3. 16. *Principal and Agent* 7. 20. *Purchase* 13. *Reversion* 1. *Revocation* 1. *Satisfaction* 19. *Trust* 70. 96. *Will* (Mistake 14.)

## LANCASTER, DUTCHY COURT.

See *Practice* 142.

## LAND.

See *Chattel* 4. *Copyhold* (Mine 2.) *Estate* (Real 1.) *Power* (Appointment 30.) *Real Estate.*

## LANDLORD AND TENANT.

1. Tenant cannot set up title against landlord.
2. No action for use, &c. by lessor, as by a stranger.
3. Tenant must rebuild in case of fire under the covenant to repair.
4. Right of renewal forfeited by laches.
5. Leaning against perpetual renewal.
6. Construction of covenant for renewal.
7. Injunction against tenant making default at trial of ejectment, and committing wilful waste, &c.: refused, where no ejectment.
8. Injunction against breach of covenant, secured by forfeiture of lease and penalty.
9. Injunction against landlord cutting ornamental trees during the term on consent to the tenant's improvements, &c.

10. Option under lease determinable at particular periods.
11. Fraud in permitting expenditure on erroneous opinion of title, &c.
12. On contract for a lease solvency of weight.
13. Distinction between liability of lessee and assignee.
14. Corporation, on disputed title to a lease from them, not compelled to produce surrendered leases, &c.
15. Interpleading bill by tenant on Landlord's Act subsequent to the lease.
16. Relief against forfeiture for breach of covenant confined to rent.
17. Order to restore distress: the sum in the contract not being stated.
18. Decree against lessee of alum-works to prevent breach of covenant to leave stock at the expiration.
19. Injunction for landlord, who by negligence failed in defending ejectment against setting up the lease, the short remainder of a term against another ejectment intended by him.
20. Compelling production of lessor's title.
21. Lessee cannot dispute landlord's title.
22. Generally death of either determines tenancy at will.
23. Interest from year to year transmissible.
24. { No relief on expenditure under landlord's observation
25. { without engagement, &c.: whether, if aware, that the lease is bad.
26. { Whether covenant against assigning, &c. without license
27. { under usual, or all proper, covenants.
28. One license determines covenant against assigning, &c.
29. Relief against lapse of time for repairs discretionary.
30. Assignment restrained by covenant not to let, &c.
31. Forfeiture by breach, admitting compensation.
32. Proviso in lease, including assignees, against assigning without license not repugnant.
33. { Bankruptcy supersedes agreement not to assign without license only for general creditors: no specific
34. { performance against it for an individual: whether for general assignees.
35. { Power under Act of Parliament to lessee to grant building leases not extended to renewed church
36. { lease: though renewed lease in some respects considered as the original.
37. Limit of the rule, that tenant cannot compel landlord to interplead.
38. Covenant against alienation without license not as a proper and usual covenant.
39. Assignment incident to lease.
40. Execution of agreement for lease with proper covenants.
41. { Under-lease within restraint of assignment: such cove-
42. { nants construed with jealousy.
43. Proper covenants implied.
44. Covenant determining lease on bankruptcy.

45. Restraint of assignment without license not within "usual covenants."
  46. Distinction as to tenancy at will being determinable at any time.
  47. Covenant for perpetual renewal.
  48. Injunction against tenant from year to year, under notice, from damage, &c.
  49. Will determined by agreement to purchase.
  50. Tenancy from year to year favoured.
  51. } Whether relief against breach of covenant to repair
  52. } as in the case of rent.
  53. No specific performance of covenant to repair.
  54. Obligation to take care of landlord's rights.
  55. Option to determine at seven or fourteen years with lessee alone.
  56. Waste, &c. prevents execution of agreement for lease.
  57. No injunction under exception of damage by fire against action for rent.
  58. Usual covenant to repair and surrender, &c. does not preclude injunction against pulling down, &c. just before the end of the term.
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1. Tenant cannot set up a title against his landlord. - H
  2. Where there is a demise, lessor cannot bring an action for use and occupation, as a stranger may: but it must be upon the deed for the rent. - - - - - II
  3. Tenant, covenanting to keep and leave the premises in repair, must rebuild in case of fire. *Pym v. Blackburn.* III
  4. Right of renewal forfeited by the laches of the tenant. *Baynham v. Guy's Hospital.* - - - - - II
  5. The Court leans against a construction for perpetual renewal, unless clearly intended. - - - - - III
  6. Construction of a covenant for renewal. *Eaton v. Lyon.* III
  7. Where a tenant defending an ejectment, brought by his landlord, makes default at the trial, and makes use of the interval to do all the mischief he can by breaches of covenant and wilful waste, an injunction will be granted on motion, or in the vacation on petition: but it was refused, where no ejectment had been brought. *Lathropp v. Marsh.* - - - - - V
  8. Injunction granted, to restrain a breach of covenant, secured by forfeiture of the lease, and a penalty. *Barrett v. Blagrove.* - - - - - V.
  9. Injunction to restrain the landlord from cutting ornamental trees in a lawn during the term upon his conduct; amounting to a consent to the plaintiff's plan of improvement, laying out the lawn, &c. *Jackson v. Cator.* V.
  10. Whether a lease for seven, fourteen, or twenty-one, years, is determinable at either of the intervening periods, at the option of both parties, or of the lessee only, nothing being expressed as to that, *quære. Dann v. Spurrier (a).* VII.

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(a) See the note, Vol. VII. page 236. Post, No. 55.

1. The relief in respect of expenditure under an erroneous opinion of title, or an expectation of a larger interest, or that the enjoyment would not be disturbed, with the knowledge and permission of the other party, requires a case of bad faith clearly made out. In this instance it failed for want of evidence. *Dann v. Spurrier.* - VII. 231
12. Upon a contract for a lease the solvency or insolvency of the tenant is an objection of weight; depending upon the circumstances. Upon that and other circumstances an injunction against an ejectment by the landlord was dissolved. *Buckland v. Hall.* - - - - - VIII. 92
13. Lessee remains liable to the determination of the term: assignee only during his possession. - - - - - VIII. 95
14. Upon a disputed title to a lease, granted by a corporation, a trust being set up against the lessee, on motion to compel the corporation to produce surrendered leases, counterparts of renewed leases, &c. no order was made. *Cock. v. St. Bartholomew's Hospital, Chatham.* - VIII. 138
15. The rule, that a tenant cannot file an interpleading bill against his landlord, does not hold, where the question arises upon the act of the landlord subsequent to the lease. *Cowtan v. Williams.* - - - - - IX. 107
16. Relief against a forfeiture under a covenant for re-entry for non-payment of rent: not, where the recovery in ejectment was also upon breach of other covenants. *Wadman v. Calcraft.* - - - - - X. 67
17. Order specifically to restore to a tenant the stock, &c. on the farm, seized by the landlord under a distress and bill of sale: the landlord not stating, whether the sum, under which by the terms of the contract he was not to enforce his remedies, was due. *Nutbrown v. Thornton.* - - - - - X. 159
18. Decree against a lessee of alum works, to prevent a breach of a covenant to leave stock of a certain amount at the expiration of the lease. - - - - - X. 161
19. Equity for a landlord, against whom judgment had been obtained in ejectment by his own negligence, to restrain his tenant, and those, to whom he had attorned, from setting up the lease against his ejectment; though only a year and three quarters of the term was unexpired; and it is not necessary, that the ejectment should be brought before the bill actually filed. *Baker v. Mellish.* X. 544
20. Whether, without express stipulation, a person, under a contract with a lessee for years to purchase the term, can insist upon a production of the lessor's title, and whether the lessee can compel such production, *quære.* The lessee's bill for a specific performance dismissed: his interest, described as fifty years, the residue of a term, free from incumbrances, being a few years only of an old term, and a reversionary term, from another

	Vol. Page
lessor; and old incumbrances not shewn to be discharged (a). <i>White v. Foljambe.</i> - - - -	XI. 337
21. Lessee cannot dispute the title of his landlord. - - -	XI. 344
22. Generally the death of either party determines a tenancy at will. - - - - -	XI. 391
23. Interest from year to year transmissible to representatives, beneficially, or as trustees. - - - -	XI. 393
24. No relief upon general equity from expenditure under the observation of the landlord by a tenant, but not under any specific engagement or arrangement. <i>Pilling v. Armitage.</i> - - - - -	XII. 78
25. As to expenditure by a tenant with the knowledge of the landlord, aware also, that the lease is bad, <i>quære.</i> -	XII. 85
26. Whether an agreement for a lease with usual covenants includes a covenant against assigning or under-letting without license, <i>quære.</i> In this instance, upon the particular construction of the agreement, for the lease of a farm, the words "such other clauses as are usual in "such cases" had not that effect. <i>Vere v. Loveden.</i> -	XII. 179
27. Whether under an agreement for a lease, containing all proper covenants, a covenant against assigning or under-letting should be included, <i>quære.</i> <i>Jones v. Jones.</i> -	XII. 186
28. Covenant against assigning without license, determined by a license once granted. - - - -	XII. 191
29. Relief to a tenant against the lapse of time for repairs in the discretion of the Court upon the circumstances. -	XII. 334
30. Covenant in a lease not to let, set, or demise, the premises, or any part, for all or any part of the term, without consent, restrains assignment. <i>Greenaway v. Adams.</i>	XII. 395
31. Relief against forfeiture by breach of covenant by lessee, where compensation can be made (b). <i>Davis v. West.</i>	XII. 475
32. Proviso against assignment without license in a lease to the lessee, his executors, administrators, and assigns, not repugnant; the construction being such assigns as he may lawfully have; viz. by license; or by law, as assignees in bankruptcy. <i>Weatherall v. Geering.</i> -	XII. 504
33. Though bankruptcy supersedes an agreement not to assign without license, that has been held only in favour of general creditors; and where there is no actual lease, but it rests in agreement to grant a lease, an individual cannot have a specific performance in opposition to such a provision: and it is very disputable, whether the general assignees could obtain it; even if there was no such provision. - - - -	XII. 504
34. Whether a person, entitled under an agreement for a lease, to be void upon assignment without license, having assigned without license, can enforce a specific performance, <i>quære.</i> - - - - -	XII. 511

(a) See the note, Vol. XI. page 352.

(b) See the note, Vol. X. page 70.

# LANDLORD AND TENANT.

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35. Power under an Act of Parliament to lessee, his executors, administrators, and assigns, to grant building leases does not extend to the tenant in a renewed lease, according to the usual course of church-leases. *Collett v. Hooper.* - - - - - XIII. 255
36. Renewed lease may be considered as the original lease, enduring to some intents, i. e. for the protection of legal interests, carved out of it. - - - - - XIII. 260
37. The rule, that a tenant cannot compel his landlord to interplead, does not prevail, where the claim of a third person arises by the act of the landlord, subsequent to the commencement of the relation of landlord and tenant. *Clarke v. Byne.* - - - - - XIII. 383
38. Under an agreement for a lease the lessor is not without express stipulation entitled to a covenant, restraining alienation without license, as a proper and usual covenant. *Church v. Brown.* - - - - - XV. 258
39. Power of assignment incident to the estate of a lessee, without the word "assigns," unless expressly restrained. XV. 264
40. Execution of an agreement for a lease with proper covenants: viz. according to the general practice as to such leases; and not contradicting the incidents of the lessee's estate; one of which is the right to have it without restraint, except what is imposed by law; unless an express contract for more. - - - - - XV. 264
41. Covenant, restraining assignment of a lease, would not permit underletting. - - - - - XV. 265
42. Covenants, restraining lessee from alienation without license, construed with jealousy. - - - - - XV. 265
43. Proper covenants implied in an agreement for a lease; as connected with the character and title of the lessor. - XV. 265
44. Covenant, that a lease shall determine upon the bankruptcy of the tenant. - - - - - XV. 268
45. Under an agreement for a lease "with usual covenants," the lessor is not entitled to a covenant against assigning or under-letting without license. *Browne v. Raban.* - XV. 528
46. Tenancy at will may be determined at any time, as to any new contract: Not as to any thing, which during the tenancy remained a common interest. - - - - - XVI. 57
47. Covenant for perpetual renewal valid. - - - - - XVI. 84
48. Injunction to restrain a tenant from year to year, under notice to quit, as in the case of a lessee for a longer term, from doing damage, and from removing the crops, manure, &c. except according to the custom of the country. *Onslow v. ———* - - - - - XVI. 173
49. Tenancy at will determined by an agreement to purchase. XVI. 252
50. Tenancy from year to year favoured. - - - - - XVI. 252
51. As to relief against an ejectment by a landlord for breach of a covenant to repair, *quære.* *Hill v. Barclay.* - XVI. 402
52. Relief against a right of entry on breach of covenant by non-payment of rent. - - - - - XVI. 405

53. No specific performance of a covenant to repair. - - -	Vol. XV
54. Obligation of tenant to take care of the rights of his landlord. - - - - -	XVI
55. An agreement for a lease, for seven, fourteen, or twenty-one, years, gives the option to the lessee alone. -	XVI
56. Tenant, having committed breaches of covenant by waste, treating the land in an unhusbandlike manner, &c. not entitled to specific performance of an agreement for a lease. - - - - -	XVII
57. No equity in favour of a lessee of a house, liable to repair with the exception of damage by fire, for an injunction against an action under the contract for payment of rent upon the destruction of the house by fire. <i>Holtzapffel v. Baker.</i> - - - - -	XVII
58. Covenant to repair, and at the end of the term surrender, buildings in good condition does not preclude an injunction against pulling them down, and carrying away the materials, just before the end of the term. <i>The Mayor, &amp;c. of London v. Hedger.</i> - - - - -	XVII

See Contract 69. (Specific Performance 54.) Copyhold (Mines 1.) Forfeiture 6. 7. 8. Injunction 7. 15. Interpleader 6. 9. 15. Notice 12. Principal and Agent 7. Tenant. Variance 1. Waste 3. 6.

LAND-TAX.

1. No equity for annuitant on profits of the <i>New River Company</i> to the benefit of an assessment to the land-tax at an under-value.	
1. Whether an annuity or rent-charge out of the profits of the <i>New River Company</i> is to bear the full assessment to the land-tax; or is to have the benefit, according to the proportion, of a reduction, in consequence of an assessment upon the profits of the company at an under-value, <i>quære</i> . The bill by the annuitant was dismissed: the Court refusing to raise an equity as to the profit arising from disobedience to the act. <i>Adair v. The New River Company.</i> - - - - -	X]

See Apportionment 2.

LAND-TAX REDEMPTION.

See Representative 16.

LAPSE.

1. Not distinguished from what is not disposed of except for construing intention.	
2. Heir takes.	
3. Distinction between residuary devisee and legatee.	
1. No difference between a lapse and what is not disposed of, except for construing intention. - - - - -	I
2. In case of lapse of real estate the heir takes. - - -	VIII



LAPSE.—LEASE.

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3. Distinction between a residuary devisee and legatee as to lapse: the latter taking every thing, that lapses: the former not. - - - - -

See *Heir* 9. *Legacy* 7. 53. *Residue* 8. *Trust* 16.  
*Vesting* 13. 38. *Will* 154. 170. 235.

LATENT AMBIGUITY.

See *Devise*. *Evidence* (*Parol* 6.) *Legacy* 58. 49. 61.  
*Will* 309.

LAY IMPROPRIATOR.

See *Purchase* 15. *Tithe* 16.

LEASE.

1. Principle of construction of enabling and restraining statutes.
  2. Constructive by agreement.
  3. For life must be by deed.
  4. Proviso against assignment without license ceases by assignment with license, though to an individual.
  5. Not by agreement, looking to a future act.
  6. Distinction between words in the present and future tense in Will.
- 
1. Principle of construction of the enabling and restraining statutes as to leases. - - - - - IX. 134
  2. Paper, entitled “Memorandum of an agreement,” between *A.* and *B.* and signed by them; expressing, that in consideration of £40, *A.* “doth agree to let,” and *B.* “doth agree to take a messuage,” &c. at £40 *per annum* rent; “and it is farther agreed,” that *A.* “shall not raise the rent nor turn out” *B.* so long as the rent is duly paid quarterly, and he does not sell any article injurious to *A.* in his business. Though the terms do not exclude the construction of actual demise, yet, the import of the whole looking to some future instrument, and a more permanent interest than from year to year, a demurrer to a bill for specific performance against *A.*, who had succeeded in an ejectment, was over-ruled. The injunction against the ejectment continued. *Browne v. Warner*. - - - - - XIV. 156. 409
  3. Lease for life must be by deed. - - - - - XIV. 158
  4. Proviso in a lease for re-entry upon assignment by the lessee, his executors, administrators, or assigns, without license ceases by assignment with license, though to a particular individual. *Brummell v. Macpherson*. - XIV. 173
  5. Agreement to let not held a lease; if a future executory act was in view. - - - - - XIV. 413
  6. Distinction between bequests of leasehold estate by words in the present and in the future tense; as confined to the existing, or comprehending a future, interest. - XVI. 199
-

- RENEWAL.**—1. Forfeited by not applying, until two lives dropped.  
 2. Apportionment of fine: not one-third on tenant for life.  
 3. Tenant for life, being one of the lives not compelled to contribute, if a legal estate: whether if a trust?  
 4. Tenant for life not charged with one-third.  
 5. Leaning against perpetual renewal.  
 6. Tenant for life, paying the fines of annual renewals out of the rents, &c. entitled to fines on renewal of under-leases.  
 7. Annuity out of tithes leased a charge on renewed lease by grantor's husband, surviving, and without contribution.  
 8. Perpetual on clear contract: not inferred from general provision for the same covenants: the same construction in equity and law: not affected by the acts of the parties.  
 9. Performance of covenant for perpetual renewal refused on laches and alteration of the property.  
 10. Perpetual refused, as not supported by custom or contract, &c.  
 11. Restraint applicable to covenant for renewal.  
 12. Does not pass under general words.  
 13. Breach of trust to renew out of rents and profits.

1. Lessor for lives, under covenant to renew on expiration of one, not bound, if no application, till two drop. *Bayly v. The Corporation of Leominster.* - - -
2. Bill by devisee in remainder to him and his heirs male of a lease for lives against tenant for life, also entitled in reversion to him and his heirs, to compel him to procure a renewal, one life having dropped: the construction of the Will being, that the lease should be kept full, and that £500 and no more should be charged thereon for that purpose upon the dropping of each life, decreed, that, if the plaintiff chose to pay the excess, the lease should be renewed; in trust to secure the £500, and, subject thereto, for the defendant for life; after his decease, to raise the farther sum advanced by the plaintiff for renewal, and the expense of the suit, with compound interest at 4 *per cent.* during the life of defendant; and subject thereto for plaintiff in tail-male; remainder to defendant and his heirs: the defendant was not allowed to charge the estate with £500 towards a fine paid by him upon a former renewal without consent of the remainder-man. Upon an inquiry directed on a re-hearing, the plaintiff appearing to have consented to the former renewal in 1786, the defendant was held entitled to charge £500 towards the fine upon that as well as all other renewals: and the decree was varied accordingly. Upon appeal the

*Lord Chancellor* held, that though the old rule, throwing one-third of the fine for renewal upon the tenant for life, does not now prevail, the tenant for life in general cases must contribute beyond the interest, in proportion to the benefit he takes: but in this case the testator having provided a fund for renewal, the tenant for life might put in his own life; and was not under an obligation to renew farther than to permit a mortgage for raising that fund. The decree was therefore affirmed; inserting expressly, that the tenant for life ought to have kept down the interest. *White v. White.*

*White.* - - - - - IV. 24. V. 554. IX. 554

Tenant for life of an estate for lives being himself one of the lives, it is not competent to the remainder-man to compel him to contribute to the expense of renewal, if it is a legal estate: *Quære*, if a trust. - - -

IV. 33

The rule, that tenant for life of an estate for lives shall pay one-third of the expense of renewal, was unreasonable; and does not now prevail: the fair proportion is, that he shall keep down the interest; like the devisee of a mortgaged estate. - - -

IV. 33

Construction of a covenant for renewal under the like covenants, &c.; that it was not for perpetual renewal: the Court's leaning against that construction, unless clearly intended. *Moore v. Foley.* - - -

VI. 232

A leasehold estate renewable being bequeathed with limitations in the nature of a strict settlement, the habit being to renew annually and to underlet, the decree declared, that the fines upon renewal ought to be paid out of the rents and profits; and that the person entitled for life, undertaking to pay those fines out of the rents and profits, was entitled to the fines on renewal of the under-leases; and a renewal to such of the under-tenants as should be desirous of it was directed.

*Milles v. Milles.* - - - - - VI. 761

Grant of an annuity for life out of the tithes leased for years, with covenant for farther assurance. The lessee afterwards renewed the lease; married; and died. Her husband administered; and renewed with his own money. The annuity is a charge upon the renewed term, generally; and the grantee is not bound to contribute to the expense of renewal. *Moody v. Matthews.*

VII. 174

A contract for perpetual renewal will be specifically executed, if clearly appearing; but it is not to be inferred from a general provision for the same covenants. The construction of such a covenant is the same in equity as at law, and is not to be affected by the acts of the parties. The bill of the tenant was retained, with liberty to bring an action. *Iggulden v. May.* -

IX. 325

Covenant for perpetual renewal. Specific performance refused under circumstances: laches, and alteration of

	the property, so that it could not be enjoyed according to the stipulations. <i>City of London v. Mitford.</i>	-	Va
10.	Bill to enforce a claim of perpetual renewal upon usage, sanctioned by decrees, and expenditure, dismissed; as not supported by the custom of the country, or contract; not within the powers of the lessor, a charitable foundation; nor according to the true construction of the decrees. <i>Watson v. The Master, &amp;c. of Hemsworth Hospital.</i>	- - - - -	XIV
11.	Restraint of leasing applicable to a covenant for renewal as well as a lease originally exceeding the limits.	-	XIV
12.	Bequest of leasehold premises, "and all my estate term "and interest therein." The interest, acquired under a subsequent renewal of the lease, does not pass. <i>Slatter v. Noton.</i>	- - - - -	XVI
13.	Settlement of a renewable lease in trust out of the rents and profits to pay the fines and charges of renewing; and, subject thereto, for husband and wife successively for life: remainder to the first son at twenty-one. The trustees, not having renewed in the lives of the tenants for life, answerable, as for a breach of trust; though not deriving any benefit from it: liable therefore, with the assets of the tenants for life, with reference to their enjoyment, and the occupying tenant, having purchased the husband's life interest, to procure a renewal for the son: the trustees indemnified against the expense by an application of the assets of the tenants for life in the first instance: but the occupying tenant not charged in their favour. The decree affirmed, with the explanation, that the tenants for life are to be charged respectively, not upon their actual enjoyment, but as it would have been under a due execution of the trust, by renewing with a fund drawn from the rents and profits. Liberty to the plaintiff, the son, as against the assignee of his father's life estate, to apply, if not otherwise paid, not as, but if, he shall be so advised; so as not to imply an opinion, that the assignee will be liable. <i>Lord Montfort v. Lord Cadogan.</i>	- XVII. 485.	XIX
	See Assets 1. Contract 69. Covenant 3. 4. Estate, for Years. Executory Trust 1. Injunction 34. Landlord and Tenant. Mortgage (Equitable 1.) Power 34. Term for Years. Trust 107. Will 265. 267.		

LEASE FOR LIVES.

See Assets 49. Devise 3. Representative 27.

LEGACY.

- 1. ) Interest from a year after the death; unless some other
- 2. ( time appointed: not beyond the legal rate.
- 3. Payment presumed.
- 4. Payable at twenty-one: on death before distinction between legatee over and administrator.

5. Charged on real estate, and payable at a future day, sinks by death before; and assets not marshalled.
6. Double: a substitution on evidence.
7. } Contingent.
8. }
9. Double: a substitution on evidence and circumstances.
10. Distinction between future and payable in future not adopted as to real estate; nor to be extended.
11. Repeated by Codicil on a contingency additional.
12. Contingent.
13. Legacies, to be paid out of a specific fund, held general.
14. Of £1000, part £14,500, *South Sea Annuities*, specific.
15. Inclination against specific.
16. Specific retained by executor unnecessarily: he is liable to depreciation.
17. Specific of bond ascertained by the amount; though insolvent.
18. Inclination against specific. Construction first on the Will.
19. Of £1000 "out of my Reduced," &c. pecuniary. Construction on the words.
20. "Of, in," or "part of, my stock," specific.
21. Specific vests immediately from the death.
22. Under a character falsely assumed by the legatee, and supposed the only motive, fails.
23. Out of the produce of sale directed, a conversion out and out, failing passed with the residue.
24. Not destroyed by a false reason, without fraud.
25. Distinguished from annuity.
26. Charged by implication.
27. ) Interest at 4 *per cent.* only, and from a year after the
28. { death, except for maintenance on convenience.
29. To A.: or in case of his death to his issue, absolute. (See No. 35.)
30. Interest from a year, unless otherwise directed.
31. To produce an annuity: whether annuity or legacy.
32. Specific and annuities included in residue to legatees.
33. Annuities included in charge of legacies.
34. Not paid under charge in aid without production of stamp.
35. To A.: or in case of her death to her children, absolute. (See No. 29.)
36. Leaning against specific. Interest from a year; though to be paid as soon as possible.
37. Pecuniary; unless plain inference.
38. Of £200 4 *per cents.* not specific.
39. Costs occasioned by the executor, also residuary legatee, or by testatrix, out of the residue.
40. Specific adeemed.
41. Pecuniary and specific distinguished.
42. To servants does not include job-coachman.
43. Though incorrect description. Receipt, signed as witness, no bar.
44. To A. for life: then to her children: another to B. on the same conditions: the latter for life only.

Vc  
:

45. Part-payment on motion with consent: the fund ample.
  46. Contingent, failing, falls into residue.
  47. Not specific, but general, as demonstrative: a construction favoured for a natural child.
  48. Charge by Will of another's debts.
  49. In foreign country and coin paid according to current value there, without regard to exchange, &c.
  50. Double by distinct instruments subject to internal evidence.
  51. Right to follow assets misapplied.
  52. Lien of residuary legatee on the specific fund.
  53. Lapse prevails in *Scotland*.
  54. Double legacies, though equal, with circumstances of difference: not if exactly similar, though by different instruments.
  55. Specific sums by devise: on death of any in his life and deficiency, abatement: but on devise for debts and legacies on death of one legatee the trust is for the others, if necessary.
  56. Specific sum the produce of sale: abatement on deficiency. To charity, void, falls into the residue.
  57. By description; though the number mistaken.
  58. Erroneous description distinguished from condition.
  59. To nearest relations does not comprehend nephews, &c. with brothers, &c.; nor vitiated by mistake of residence.
  60. To persons named and such others as should be named: no others being named.
  61. By description applying to two: latent ambiguity; and evidence admitted.
  62. Without interest, if claimed within five years; if not, without interest as aforesaid to another: on no claim the latter established with 4 *per cent.* from five years.
  63. Evidence on latent ambiguity, two of the same name.
1. Interest of legacies to be computed from a year after testator's death; unless some other time appointed by testator: but he cannot make executor answer interest beyond what the law has done. - - - - -
  2. Legacies not distributable till a year after testator's death.
  3. Payment of a legacy presumed after above forty years without demand. *Jones v. Turberville*. - - - - -
  4. Legacy payable at twenty-one; before which time the legatee dies: a person claiming by limitation over takes immediately: but the administrator of the infant must wait till the time, at which the legacy is payable, unless the whole interest is given. - - - - -
  5. Legacy charged upon real estate and payable at a future day sinks as to the real estate by the death of the legatee before the time of payment; and assets cannot be marshalled. *Pearce v. Loman*. - - - - -
  6. The rule, that legacies to the same persons by different instruments shall be accumulative, repelled by internal evidence of an intended substitution. *Allen v. Cullow*.

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III.

- Legacy to *A.*, in case she shall be living with the testatrix at her decease, with limitations over upon the death of *A.* before twenty-one or marriage, fails by the death of *A.* in the life of the testatrix. - - - III. 294
- . A legacy upon an express contingency, which never happened, failed, notwithstanding the apparent intention in favour of the legatee. *Holmes v. Cradock.* - - - III. 317
- . The rule, that legacies to the same persons by different instruments shall be accumulative, repelled by internal evidence and the circumstance, that, all the legatees by the first instrument were legatees in the second, except those, who were dead, or had quitted the testator's service. *Barclay v. Wainwright.* - - - III. 462
- . The distinction between a legacy given at twenty-one and one payable at twenty-one is a positive rule of the Ecclesiastical Court, adopted as to personal legacies, but not as to real estate; and not approved, or to be extended. - - - III. 543
- . Legacy by Will: the same sum given by Codicil to the same person upon a contingency was held additional. *Hodges v. Peacock.* - - - III. 735
- . Legacy to *A.* if he be living, and in case of his death before the decease of *B.* to *C.* is contingent, viz. if *A.* survives *B.* - - - III. 735
- . Legacies to be paid out of a specific security, which failed, held general upon the circumstances. *Roberts v. Pocock.* - - - IV. 150
- . Testatrix gave nine legacies of £1000 each, part of £14,500 *South Sea* Annuities; and as to the residue of the said fund and all other her personal estate, including such of the said legacies as should lapse by death, before they should be transferrible, upon trust to convert into money such part of her residuary personal estate as shall not consist of *South Sea* Annuities, and invest such money with any money belonging to her at her decease in said fund of *South Sea* Annuities and from time to time invest the dividends, &c. of all such *South Sea* Annuities as shall constitute her residuary personal estate in the same fund, till the youngest of the said legatees shall, or would if living, have attained twenty-one; and then to transfer the whole of such *South Sea* Annuities to said nine legatees equally, with such survivorship as their original shares. The nine legacies of £1000 each only are specific; the remainder of the *South Sea* Annuities is part of the general personal estate. *Richardson v. Brown.* - - - IV. 177
- . Legacy of the money due upon a note held specific, upon the intention: but the inclination of the Court is against specific legacies, and to hold it a general legacy, with reference only to the security, as the first fund to be applied to it. *Chaworth v. Beech.* - - - IV. 555



- |  |         |
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| 16. Specific legacy retained by the executor for assets; but was not wanted: in case of depreciation the legatee is entitled to the original value. - - - - -  | IV. 5   |
| 17. Testator gave to his sister the interest of £300 upon bond for life, and after her decease to her daughter the interest due upon the said bond at her death with the principal. The legacy is specific; and there being among other bonds one of the exact amount, it was held to refer to that, though an insolvent security, and the interest in arrear before the death of the testator. <i>Innes v. Johnson.</i> - - - - -   | IV. 5   |
| 18. The inclination of the Court is against specific legacies. The construction must be upon the face of the Will, before the account of the effects is considered, to see, whether that affords a foundation. - - - - -   | IV. 5   |
| 19. Legacy of "£1000 out of my Reduced Bank Annuities," held pecuniary: the Court leaning against holding a legacy specific, unless clearly intended. The Court would not take into consideration the evidence of the value of the stock at the date of the Codicil, by which the legacy was given, nor an erasure of a legacy to the same person by the Will; but decided upon the words of the Codicil. <i>Kirby v. Potter.</i> - - - - -  | IV. 7   |
| 20. "Of my stock," or "in my stock," or "part of my stock," will make a legacy specific. - - - - -   | IV. 7   |
| 21. A specific legacy vests immediately from the death of the testator. - - - - -  | IV. 7   |
| 22. If a legacy is given to a person under a particular character, which he has falsely assumed, and which alone can be supposed the motive of the bounty, the rule of the <i>Civil</i> law is adopted; and the legacy fails. Therefore, where a legacy was given by a woman to a man in the character of her husband, whom she supposed and described as such, but who at the time of the marriage ceremony with her had a wife living, the Court in respect of his conduct held him not entitled; but inclined to think it would be otherwise, where from circumstances not moving from the legatee himself the description is inapplicable; as where a testator gives a legacy to a child from motives of affection, supposing it his own, but is imposed upon in that respect. <i>Kennell v. Abbott.</i> - - - - - | IV. 8   |
| 23. A legacy out of the produce of a copyhold estate, directed to be sold, failing was held to pass by the residuary clause against the heir; the object being a general conversion out and out. <i>Kennell v. Abbott.</i> - - - - -   | VI. 8   |
| 24. By the <i>Civil</i> law a false reason given for a legacy is not of itself sufficient to destroy it; unless fraud; from which it may be presumed, that, if known, the legacy would not have been given. - - - - -  | IV. 8   |

# LEGACY.

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st of an annuity of £200 for the use of *A.* and her  
ren, to be paid out of the general effects, until it  
nvenient to the executors to invest £5000 in the  
s in lieu thereof for her and their use, and to the  
ast liver, subject to an equal division of the in-  
t, while more than one alive: held an annuity,  
an absolute legacy. Affirmed on appeal. *Innes*  
*itchell.* - - - - - VI. 464. IX. 212

e of legacies by implication upon a fund arising  
the accumulation of rents and profits, dividends  
nterest. The other questions were not determined:  
whether the real estate was charged by implication  
words, which could be otherwise satisfied; and, if  
whether the Will, directing an estate to be pur-  
ed, and settled upon the testator's son with re-  
ders over, for which the testator afterwards con-  
ed, and the purchase-money having been paid out  
ie personal estate under a power in the Will for  
purpose, the legatees by marshalling could have  
enefit of the vendor's lien upon the estate for the  
hase-money. *Austen v. Halsey.* - - - - - VI. 475

al rule, that legacies, where no interest is given by  
Will, shall carry interest at 4 *per cent.* only, and  
the end of a year after death of the testator; ex-  
where it is given by way of maintenance; though  
und produces more; and the interest shall not be  
ased by the effect of appropriation. *Sitwell v.*  
*ard.* - - - - - VI. 520

court will look at principles of convenience; as in  
ule, that legacies shall be payable at the end of a

- - - - - VI. 539  
y to *A.* or in case of his death to his issue, absolute  
e parent. *Turner v. Moor.* - - - - - VI. 557

cases of legacy interest only from the end of a year  
the death; unless otherwise directed: the old rule,  
nding upon the fund, as productive or barren,  
; exploded. - - - - - VII. 97

ier a sum of money, directed to be placed out to  
uce an annuity, is to be considered as legacy or  
ity with reference to the time of payment, *quære.* VII. 97

a residuary bequest to the legatees in proportion  
eir legacies, all legatees, pecuniary and specific,  
of rings, &c. not expressly or by implication ex-  
d, were held entitled: So annuitants, if they had  
een excluded upon the construction of the whole

*Nannock v. Horton.* - - - - - VII. 391  
ge of legacies held a charge of annuities. - - - VII. 402

es not paid under a charge upon real estate in aid  
e personal without production of the stamp under  
egacy Act, 36 Geo. 3. c. 52. s. 7, until it is ascer-

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|     | tained, that there is no personal estate applicable.<br><i>Holme v. Stanley.</i> - - - - -   | Vol.<br>VIII. |
| 35. | Legacy of stock in trust for the use exclusive right and property of <i>A.</i> : but should she happen to die, then in that case among her children: another legacy of stock to <i>A.</i> , to be paid her as soon as possible, or in the event of her death among her children: another legacy of stock to <i>B.</i> and in case of her death among her children: all these legacies held absolute in the respective mothers. <i>Webster v. Hale.</i> - - - - -   | VIII.         |
| 36. | Leaning against specific legacies. Unless specific, interest only from the end of a year after the testator's death, notwithstanding a direction to pay as soon as possible. - - - - -   | VIII.         |
| 37. | After a legacy of stock in the 4 <i>per cent.</i> Consolidated Bank Annuities, a legacy to the same persons of "an additional sum of £2000 more to be paid out of the "4 <i>per cents</i> ," &c. was held pecuniary; as the <i>prima facie</i> construction; which is to be controlled only by plain inference from the rest of the Will upon solid and rational grounds; not by conjecture upon slight circumstances. <i>Deane v. Test.</i> - - - - -   | IX.           |
| 38. | Legacy of "£200 4 <i>per cent.</i> Consolidated Bank Annuities," not specific. The general assets, therefore liable to make up the deficiency of the fund. <i>Wilson v. Brownsmith.</i> - - - - -  | IX.           |
| 39. | Costs of a suit for a legacy out of the residue: the suit being rendered necessary either by the conduct of the executrix, who was the residuary legatee, or by the disposition of the testatrix. - - - - -  | IX.           |
| 40. | Specific legacy of money due on a note, received afterwards by the testatrix, and paid to a banker, with whom she had no other money; where, except £10 she drew out, it remained at her death. An ademption. <i>Fryer v. Morris.</i> - - - - -  | IX.           |
| 41. | Legacies to one younger child of "the sum of £12,000 "of my funded property to be transferred in his name "or employed as it shall appear most beneficial." To another, the "sum of £12,000 in every respect the "same." To a third, the sum of "£12,000 to be enjoyed by him in every respect" as the former: The residue real and personal to the eldest son. The legacies to the younger children pecuniary, not specific: the fund, if deficient, to be equally divided among them. <i>Lambert v. Lambert.</i> - - - - - | XI.           |
| 42. | Under a general bequest to servants a coachman, provided with the carriage and horses by a job-master, according to the usual course of that business, not entitled. <i>Chilcott v. Bromley.</i> - - - - -   | XII.          |
| 43. | Bequest "to the children of <i>Robert Holmes</i> , late of "Norwich, and now of <i>London</i> , the sum of £100 a-piece." <i>Robert Holmes</i> had left <i>Norwich</i> at the age  |               |

- of fourteen or sixteen; and died in *London* several years before the Will. His only surviving child entitled to the legacy against the claims of the children of *George Holmes*, formerly of *Norwich*, residing in *London* at the testator's death, upon the suggestion of mistake. The right not barred by merely signing a receipt, as a witness, upon payment by the executor to the adverse party; not amounting to a release, or fraud. *Holmes v. Custance.* - - - - - XII. 279
- . Legacy to *A.* for life; then to her children for maintenance, and to be equally divided among them on their arriving at twenty-one; followed by a legacy to *B.* "on the same conditions, on his attaining the age of twenty-one." The legacy to *B.* construed in the same manner as the other, viz. for life only, &c. *Longdon v. Simson.* XII. 295
- . Payment in part of a legacy ordered on motion with consent; the fund admitted to be ample. *Pearce v. Baron.* XII. 459
- . Construction of a residuary clause, as comprehending a legacy, given upon a contingency, which did not happen. *Bird v. Le Fevre.* - - - - - XV. 589
- . Legacy of "£5000 sterling or 50,000 current rupees," afterwards described as "now vested in" the *East India* Company's bonds, and sometimes mentioned as "the said sum of £5000 sterling," held not specific, but general; as a demonstrative legacy, with a fund pointed out: a construction to be favoured for a natural child; as giving a provision in all events: the Will also giving one legacy, clearly specific, viz. the sum of £3348, "which said sum is in two bills," described as then laying for acceptance. *Gillaume v. Adderley.* - XV. 384
- . Charge by Will on real estate of simple contract debts of another person considered as a legacy, carrying interest from the death of the testator at 4 per cent. *Shirt v. Westby.* - - - - - XVI. 398
- . Legacy in a foreign country and coin, as sicca rupees by a Will in *India*: if paid by remittance to this country, the payment must be according to the current value of the rupee in *India*, without regard to the exchange or the expense of remittance. So as to other countries. *Cockerell v. Barber.* - - - - - XVI. 461
- . Legacies to the same persons by distinct instruments accumulative: subject to be repelled by internal evidence; as where the same sum is given for the same cause: whether by the mere equality of amount, *quære.* *Benyon v. Benyon.* - - - - - XVII. 34
- . Right of pecuniary or residuary legatee to follow the assets in case of misapplication, where a creditor or specific legatee could. *M'Leod v. Drummond.* - XVII. 169
- . Lien of residuary legatee on the specific fund. - XVII. 169
- By the law of *Scotland*, as well as of *England*, a legacy lapses by the death of the legatee in the testator's life. XVII. 351

54. Double legacies, though of equal amount, with circumstances of difference, as in the times of payment of annuities, half-yearly and quarterly, accumulative: not, if exactly similar; though by different instruments. *Currie v. Pye.* - - - - - XVII. 462
55. Devise in trust to pay several persons £1000 each: on the death of any in devisor's life, in case of a deficiency the others abate: but if to pay debts and legacies, and one legatee dies, the trust is for the other legatees, if necessary. - - - - - XVII. 466
56. Devise in trust to sell, but not for less than £10,000, and to pay several sums, amounting to £7800, and the overplus monies arising from the sale to *A.* A specific legacy of £10,000, and, the sale producing less, *A.* and the others to abate: legacies to charity, void by the statute 9 Geo. 2. c. 36, fell into the general residue. *Page v. Leapingwell.* - - - - - XVIII. 463
57. Legacy "to the three children of *A.* the sum of £600 "each." Four children, all born before the date of the will, entitled to £600 each. *Garvey v. Hibbert.* - XIX. 125
58. Legacy "to my namesake *Thomas*, the second son of my "brother *John*," there being no son named *Thomas*, established in favour of the second son *William*; as an erroneous description, not a condition. *Stockdale v. Bushby.* - - - - - XIX. 381
59. Bequest by a testator in *India*, "to my nearest surviving "relations in my native country *Ireland*," confined to brothers and sisters living in *Ireland* or elsewhere: the addition of a mistaken description, viz. of the place of residence, not vitiating a gift to persons otherwise sufficiently described. Nephews and nieces excluded. *Smith v. Campbell.* - - - - - XIX. 400
60. Under a bequest to three persons named, and such others as testator should afterwards name, no others being afterwards named, whether those named should take, *quære.* - - - - - XIX. 490
61. Legacy "to *Robert C.* my nephew, the son of *Joseph C.*" Other clauses describing "my nephew, *Robert C.*" generally; and one legacy "to my nephew *Robert C.* the "son of *John C.*;" the testator had only two brothers, *John* and *Thomas C.*, each having a son named *Robert C.* parol evidence admitted to resolve this latent ambiguity; shewing intimacy with the son of *John*, and very slight knowledge of the other: and the legacy was decreed to the former. *Careless v. Careless.* - XIX. 601
62. Legacy without any interest to *A.*, if claimed within five years from the testator's death; if not, the same sum without interest as aforesaid to *B.*; no claim being made by *A.*, decreed to *B.* with interest from the end of five years at 4 per cent. *Careless v. Careless.* - XIX. 601

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3. Evidence admissible to resolve a latent ambiguity upon facts *dehors* the Will ; as upon a legacy to the testator's nephew *Robert*, there being two nephews of that name, presumption in favour of one, proved to have been intimately known to the testator. - - - -

XIX. 604

See *Annuity* 14. 15. *Assets* 13. 15. 46. *Charge* 12. *Charity* 71. 85. 86. *Creditor* 5. 6. *Devise* 4. 24. *Double Legacies*. *Evidence* 7. 8. (*Parol* 12.) *Executor* 2. 22. 35. 73. 74. 90. *Exoneration* 5. *Grandchild* 1. *Interest* 4. 13. 14. 15. 16. 17. 20. 21. 22. 24. 35. 36. 37. 39. 40. *Joint-tenant* 4. *Laches* 6. 24. *Maintenance* 15. *Parent and Child* 1. *Portion*. *Practice* 107. 114. *Satisfaction* 2. 4. 7. 19. 21. 23. 26. 28. 34. 40. 43. 44. 47. 48. *Specific Devise, &c.* 2. 3. *Superstitious Use* 1. *Trust* 15. 20. 21. 51. *Vesting* 38. 42. 58. 60. 71. *Will*.

## LEGAL JURISDICTION.

See *Jurisdiction*.

## LEGITIMACY.

1. Access, or not, may now be proved.  
. Access or non-access may now be proved: the old rule to presume access within the narrow seas having given way. - - - -

XII. 58

See *Child*. *Purchase* 22.

## LENGTH OF TIME.

See *Bankrupt* 34. *Executor* 84. *Fraud* 41. 42. *Laches*. *Limitation*. *Pleading* 18. *Presumption* 2. 3. 16.

## LESSOR AND LESSEE.

See *Bankrupt* (*Conditional Limitation* 3.) *Landlord and Tenant*.

## LETTER MISSIVE.

See *Peer* 1.

## LETTERS.

See *Annuity* (*Memorial* 8.) *Contract* 76. (*Specific Performance* 25.) *Evidence* (*Presumptive* 2. 3.) *Frauds, Statute of*, 4. *Settlement* 8. 9.

## LEX LOCI REI SITÆ.

See *Domicil* 1.

## LICENSE TO ASSIGN.

See *Landlord and Tenant* 38. 41. 42. 45. *Lease* 4.

## LICENSED TRADE.

See *Alien* (*Enemy* 5.)

## LIEN.

1. Equitable by assignment of rents, &c. or deeds.  
2. No lien ; on special circumstances.

3. Equitable by covenant to pay annual profits.
4. Not for consideration of a void annuity on a fund in Court, charged with it.
5. } Cannot be acquired after the arrest of a bankrupt by
6. } lying in prison.
7. On bills remitted to purchase foreign coin, and returned by direction, as it could not be procured; under the special circumstances: whether if to buy goods in the way of trade.
8. Under the usual condition at auction against default of the purchaser.
9. Not under circumstances.
10. Under circumstances.
11. Of vendor lost by special security. Whether by every security.
12. Of vendor: whether against equitable mortgage.
13. Equitable by possession of deeds disapproved.
14. Whether of vendor of timber felled.
15. Equitable the ground of stoppage *in transitu*.
16. Vendor's.
17. No stoppage after delivering part.
18. After possession determined.
19. For supplies to *West India* estate by tenant for life, &c.
20. Agreement for distinguished from judgment.
21. Solicitor's in bankruptcy. Distinction between the Courts of Law on a right of set-off.
22. Of town agent of country solicitor.
23. Of attorney generally on papers.
24. Solicitor's superseded by security.
25. Vendor's: on goods in different trades: effect of security.
26. Factor's lost by special contract.
27. Failed: the transaction amounting to felony; and no property in the subject.
28. Not on ship abroad by parol, nor by bills of the master; unless on clear mistake.
29. On ship abroad by bill of sale.
1. Assignment of rents and profits, or of deeds, is an equitable lien; and assignee may in equity insist upon a mortgage. *Ex parte Wills.* - - - -
2. Bond by infant for a just debt; his mother and infant sister, being entitled on death of *A.* without issue to £4000 stock for the mother for life, after to her children according to appointment, if no children, to the mother, after the death of the son covenanted to pay that debt, when either should become entitled to that stock. Upon marriage of the daughter the mother made an appointment of the stock in her favour; but next day the husband having notice of, and approving the covenants to pay the son's debt, and reciting his and his wife's intention to secure it "as after mentioned," released all their right to that stock to the mother; and covenanted, that, when the wife should



be twenty-one, all their interest should be vested in her; and a trust was declared, that, if the obligee should have a right to recover that debt, it should be paid out of that stock. Afterwards a bill being filed to set aside the settlement as an appointment by the mother for her own benefit without consideration, the parties were by agreement mutually released from the covenants in it; and the husband covenanted, that if the obligee should have a right *in life of the mother* to recover the debt, it should be paid out of that stock. The mother died intestate before *A.* Determined, that a fair assignee of the debt had no specific lien on the fund; which could be liable only by being brought back into the mother's assets, as taken out in fraud of her creditors: for which it must be said, either that there was no pretence for the compromise, or no pretence for its providing for the debt only if suable in the mother's life: but the marriage brocage in the settlement was sufficient ground for the compromise; and the bill did not go on the other ground; therefore the common decree for account of assets, debts, and funeral expenses, without reference to that fund, was made against the husband and wife, as administrators. The debt of the son was a sufficient consideration for the covenants; and if the mother had survived *A.* there would have been a specific lien. *Johnson v. Boyfield.* -

Covenant to set apart and pay annual profits of land is in equity a lien on the land against the covenantor, and claimants under him with notice. *Legard v. Hodges.*

On bill of interpleader by the owner of an estate against the grantee of a rent-charge out of it, assigned to secure an annuity, and the annuitant, the annuity being void, the arrears of the rent-charge in Court were paid to the original grantee; and the annuitant was held not entitled to have the consideration repaid out of that fund, there being only a general debt at law and no lien. *Duke of Bolton v. Williams.* - - - -

Upon an act of bankruptcy by lying two months in prison joint and separate Commissions: the former being established, the latter superseded, the attorney employed by the bankrupt and in sustaining the latter against the former has no lien upon papers delivered to him by the bankrupt after the arrest: upon petition of the joint creditors he was ordered to deliver them up. *Ex parte Lee.* - - - -

On a bankruptcy by lying two months in prison no possible lien can be acquired after the first arrest. - -

1. abroad commissions *B.* in *London* to send him foreign coin; with particular directions as to the manner and times of sending it; and remits bills; which *B.* discounts; and, the coin required not being to be had in

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*England*, sends two remittances, not equal to the amount of *A.*'s bills, to *Lisbon*, for the purpose of procuring it; with directions, if it cannot be had, to return bills. The coin not being to be had, bills, nearly to the amount of the remittance to *Lisbon*, not indorsed by the correspondent there, are returned; and, *B.* in the interval becoming bankrupt, are received by his assignees. *A.* was held to have a lien upon those bills upon the particular circumstances: the *Lord Chancellor* expressing much doubt, whether the lien would hold in the case of a remittance to buy goods in the way of trade. *Ex parte Sayers.* - - - - -

8. Lien under the usual condition at an auction, that, if the vendee should fail to complete his purchase the vendor should be at liberty to re-sell; and the vendee pay the expenses and make good the deficiency, &c. *Ex parte Hunter.* - - - - - V
9. No lien under the circumstances. *Adams v. Claxton.* - V
10. Lien. *Ex parte Smith.* - - - - - V
11. Vendor's equitable lien upon the estate for the purchase-money lost by taking a special security by way of a pledge of stock. Whether every security would have that effect, *quære.* *Nairn v. Prowse.* - - - - - V
12. Whether the vendor's lien could prevail against an equitable mortgage by deposit of deeds, *quære.* *Nairn v. Prowse.* - - - - - V
13. Lien by possession of title-deeds disapproved; and not to be extended; with reference to the Statute of Frauds. In this instance it failed; the deeds being delivered, not as a present security, but for the purpose of having a mortgage security created. *Norris v. Wilkinson (a).* - X
14. Upon the bankruptcy of the purchaser of a chattel, viz. timber felled, whether the vendor has a lien, and may prove the deficiency, *quære.* *Ex parte Gwynne.* - X
15. Stoppage *in transitu* upon the ground of equitable lien, not of rescinding the contract. - - - - - X
16. Vendor's lien upon a sale of real estate. - - - - - X
17. No stopping *in transitu* after delivery of part. - - - - - X
18. Lien after possession determined; as after the death of tenant for life of a *West India* estate for supplies, provided by him. - - - - - XI
19. Lien upon a *West India* estate for supplies furnished by tenant for life, tenant in common, &c. - - - - - XI
20. Distinction between a judgment, as attaching upon the land, and a special agreement for a security upon the land. - - - - - X
21. Solicitor's lien in bankruptcy; as in a cause, upon the debt and costs: viz. the clear result of the equity between the parties. Distinction between the practice of

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(a) See the note, Vol. XII. page 200.

## LIEN.—LIMITATION.

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- the Courts of Common Law: the *Common Pleas* upon the same principle not allowing the lien to interfere with a right of set-off, &c., the *King's Bench* holding the lien paramount any claim of the party. *Ex parte Castle*. XV. 539
1. Lien of the agent in town upon the papers in his hands for what is due to him, as agent in the cause, from the solicitor in the country. - - - - - XVI. 164
2. Attorney's lien generally on papers in his possession: not limited to the occasion, on which they were delivered, without special agreement. *Ex parte Sterling*. - XVI. 258
3. Solicitor's lien on papers superseded by taking security. *Cowell v. Simpson*. - - - - - XVI. 275
5. Vendor's lien for the purchase-money: lien upon goods in different trades for work upon them, for the general balance; and as to the effect of taking security. - XVI. 278
6. Factor's lien, both for his expenditure on the goods in his possession, and his general balance, lost by a special contract for a particular mode of payment. So, in various trades. - - - - - XVI. 280
7. Bill, following life insurances, effected by the plaintiff's clerk with the plaintiff's money, procured by embezzlement, and transferred to the defendants for valuable consideration, but with notice. Demurrer allowed: the transaction amounting to felony by the Stat. 39 Geo. 3. c. 85; and therefore not raising a civil contract: 2dly, the policies not being the plaintiff's property. *Cox v. Paxton*. - - - - - XVII. 329
8. No lien on a ship abroad can be created by parol, nor by bills of exchange drawn by the Master; unless upon mistake, clearly established, the instrument can be corrected; as in the case of a joint bond, intended to be joint and several. *Ex parte Halket*. - - - - - XIX. 474
9. Lien on a ship abroad by bill of sale. - - - - - XIX. 475

See Assets 43. Attorney and Solicitor. Bankrupt 11. (Assignee 22.) (Proceedings 4.) Contract 18. Deposit. Fraud 49. Interpleader 10. Legacy 26. 51. 52. Marshalling 6. Mortgage. Partner 40. 49. Ship 7. Trust 35. Vendor and Vendee 4. 5. 6. 7. 29. Will 10.

## LIFE ESTATE OR INTEREST.

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## LIGHTS, ANCIENT.

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1. Over: condition not extended to it.
2. "Heir male" in a Will may be words of limitation.
1. Condition not to be extended to a limitation over. - III. 320
2. In a Will the words "heir male" may be *nomen collectivum* to effectuate the general intention to include all the issue. - - - - - IV. 794

## TIME.

- TIME.**—1. Account of rents, &c. limited to six years.
2. } Whether principal and agent within the exception as  
3. } to merchants' accounts; and as to the necessity of  
some transaction within six years to have the benefit  
of the exception.
4. Executor *de son tort*, before probate, within the Statute.
5. Analogy in Equity to the Statute.
6. Presumption against a rent-charge from time.
7. Account of rents, &c. limited to six years.
8. Plea of the Statute over-ruled on acknowledgment.
9. As to reviving under a trust for debts.
10. Analogy in Equity to the Statute.
11. Effect of the Statute not discontinued by bankruptcy.
12. As to reviving under devise for debts.
13. Executor not bound to plead; but may object against creditors coming in before the Master.
14. Effect of the Statute in *Jamaica* beyond that in this country: Exception; trusts actual, not constructive; not absentees; nor tenant for life with power of sale.
15. Though the Courts shut in war, the Statute runs.
16. Analogy in Equity to the Statute.
17. Constructive trust barred by acquiescence.
18. Redemption barred by twenty years possession, &c.
19. Merchants' accounts, ceased six years, barred.
20. Demurrer to bill, stating no demand for twelve years.
21. Effect of allegation, that the parties dealt as merchants.
22. The Statute not given in evidence at Law: whether available by demurrer.
23. Exception of merchants' accounts only where some item within six years.
24. Creditor's, not debtor's, absence abroad out of the Statute.
25. Limitation in Equity independent of the Statute.
26. Decisions, that a direction by Will to pay debts is out of the Statute, disapproved. Distinction between bond and simple contract: different pleas.
27. The Statute not applicable to debt by decree, order, or award. Time of imprisonment not considered.

1. Account of rents and profits confined to six years by analogy to the action for mesne profits. *Reade v. Reade*. V.
2. Whether transactions between principal and agent are within the exception in the Statute of Limitations as to merchants' accounts, *quære*. *Jones v. Pengree*. VI.
3. Whether, in order to have the benefit of the exception in the Statute of Limitations as to merchants' accounts, some transaction must have passed within six years, *quære* (a). *Jones v. Pengree*. VI.

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(a) See the note, Vol. VI. page 582.

# LIMITATION.

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Plea of the Statute of Limitations by an executor, the testator having died in 1786, though probate was not taken till 1803, allowed: the allegation of the bill upon a fair construction being, that the defendant had possessed the personal estate, and therefore might have been sued, as executor <i>de son tort</i> , previously to 1792. <i>Webster v. Webster.</i> - - - - -	X. 93
Though the Statute of Limitations does not apply to any equitable demand, equity takes the same limitation in cases analogous to those at law. - - - - -	X. 466
No limitation to a rent-charge in law or equity: but the demand may be excluded by presumption from length of time and acquiescence. - - - - -	X. 467
Account of rent and profits limited to six years by analogy to legal limitation. - - - - -	X. 469
Plea of the Statute of Limitations to a bill of discovery over-ruled upon letters, assigning reasons for declining to pay; and recommending the plaintiff to bring an action; as amounting to an acknowledgment of the debt, sufficient to take it out of the Statute upon the authorities; though against principle. <i>Baillie v. Sibbald.</i> -	XV. 185
As to reviving a debt, within the Statute of Limitations, under a trust for debts, <i>quære.</i> - - - - -	XV. 488
Effect of time in Equity by analogy to the Statute of Limitations. - - - - -	XV. 496
The effect of the Statute of Limitations not discontinued by bankruptcy. - - - - -	XV. 496
As to reviving a debt, within the Statute of Limitations under a devise for debts, <i>quære.</i> - - - - -	XV. 497
Executor not bound to plead the Statute of Limitations; but after the decree the objection may be taken against other creditors, coming in before the Master. - - -	XV. 498
Effect of the Statute of Limitations, or possessory law, of <i>Jamaica</i> (beyond the Statute of Limitations in this country;) barring, not merely the legal remedy, but any suit, claim, or demand: converting seven years possession into a positive, absolute, title. No exception in favour of absentees; not being within the exception expressed; as there was no such exception out of the Statute of Limitations in this country; until expressly given by Statute 4 Ann. c. 16. s. 19. The exception in the law of <i>Jamaica</i> , relating to trustees, means actual, not constructive, trusts. The exception as to tenants for life not applicable, where they could convey the fee under a power of sale. <i>Beckford v. Wade.</i> - - - -	XVII. 87
Though the Courts of Justice were shut up in time of war, so that no Original could be sued out, the Statute of Limitations continues to run. - - - - -	XVII. 93
Effect of length of time in Equity by analogy to the Statute of Limitations, though not directly affecting trusts. - - - - -	XVII. 96

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| 17. Though no time bars a direct trust, as between <i>cestui que trust</i> and trustee, a constructive trust barred by long acquiescence; though the true state of the fact may be easily ascertained, and the ground of original relief was clear; and even arising out of fraud. - - -   | XVII.  |
| 18. Redemption barred by twenty years possession without impediment to the mortgagor, or ten years after impediment removed. - - -   | XVII.  |
| 19. Statute of Limitations a bar to merchants' accounts, all accounts having ceased above six years. <i>Barber v. Barber.</i> - - -  | XVIII. |
| 20. Demurrer upon the Statute of Limitations to a bill for an account, stating that no demand was made for twelve years. <i>Foster v. Hodgson.</i> - - -   | XIX.   |
| 21. Whether the allegation, that the parties dealt as merchants, implies, that the accounts are merchants' accounts within the Statute of Limitations, <i>quære.</i> <i>Foster v. Hodgson.</i> - - -   | XIX.   |
| 22. The Statute of Limitations not given in evidence at law; whether a good defence by demurrer, <i>quære.</i> - - -   | XIX.   |
| 23. Conflicting opinions formerly on the exception in the Statute of Limitations as to merchants' accounts; whether barred, if no item within six years (as now decided; <i>Barber v. Barber</i> , Vol. XVIII. page 286,) or excepted generally. - - -   | XIX.   |
| 24. The creditor's, not the debtor's, absence from the country takes the demand out of the Statute of Limitations. -   | XIX.   |
| 25. Limitation in equity independent of the statute. - -   | XIX.   |
| 26. The old decisions, that a direction by Will to pay debts prevents a plea of the Statute of Limitations, disapproved. Distinction between debt on simple contract, the statute admitting the debt, but taking away the remedy, and on bond, the time raising a presumption of payment. Different pleas to bond and simple contract. - - - | XIX.   |
| 27. The Statute of Limitations not applicable to debt by decree, order, or award. The time, while the debtor is in custody, not considered. <i>Mildred v. Robinson.</i> -  | XIX.   |
| See Annuity ( <i>Memorial</i> 6.) Appeal 14. Bankrupt ( <i>Partner</i> 1.) ( <i>Re-hearing</i> 1.) ( <i>Statute of Limitations</i> 2.) Chancery ( <i>Office of Register</i> 1.) Charge 7. 8. Infant 28. Mortgage 55. Pleading 23. 32. Presumption 3. Remainder 3.  |        |

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## LIMITATION OF ACCOUNT.

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## LIMITATION OVER.

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1. Widow's claim under the custom barred by contract.
2. Advancement increases the shares of the other children by the custom, not the father's disposing power.
3. The custom attaches only on property at the death; disposition, not to take effect till after death, a fraud.

1. Husband dying intestate, the widow is bound by her contract not to claim under the custom of *London*. -

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2. In cases upon the custom of *London* the effect of advancement is only to remove that child out of the way, and increase the shares of the others: Not to increase the part, of which the father would have power to dispose. - - - - -

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3. The custom of *London* attaches only on the property the freeman has at his death: but a disposition, not to take effect until after his death, though by an irrevocable instrument, is a fraud upon the custom. -

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See *Assets* 3. *Jurisdiction* 20. 21. *Power* (*Appointment* 49.) *Practice* 123. *Tithe* 9. 14.

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LORD CHANCELLOR.

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LOST BOND.

- 1. Relief against sureties on terms.
  - 2. } Grounds of equitable Jurisdiction: exclusive, until
  - 3. } lately assumed at law.
  - 1. Relief upon a lost bond against sureties, the principal being out of the Jurisdiction, upon giving an indemnity against demands of the plaintiffs, or persons claiming under them, by virtue of the bond, and such costs, damages, and expenses, as the defendants may be put to by the loss of the bond. *East India Company v. Boddam.* - - - - - IX. 464
  - 2. Jurisdiction of equity upon lost bonds very ancient: founded upon the want of remedy at law without *profert*; till that Jurisdiction was lately assumed. - - - IX. 466
  - 3. Another reason for the exclusive jurisdiction of equity upon lost bonds—the difficulty of securing indemnity at law. - - - - - IX. 466
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- 1. Inquiry what money in committee's hands from time to time.
- 2. Interest against committee of saving before the commission.
- 3. Costs to committee, not regularly accounting, refused.
- 4. Lunatic to have every comfort without regard to expectants.
- 5. Waste in the statute means destruction.
- 6. The statute introduces no new right in the Crown: "Waste," &c. construed in the ordinary sense.
- 7. Timber, part of the general rental, to be managed in the usual manner.

8. Jurisdiction under the statute.
9. General principle the interest of the lunatic without regard to the succession.
10. Mode of administration.
11. No conveyance under the statute 4 Geo. 2. by trustee, found lunatic by the Report, unless a commission.
12. Under jurisdiction abroad acknowledged.
13. Bankrupt committee removed; not from custody of the person, if found proper to continue it.
14. Transfer under statute 36 Geo. 3. by trustee, actually refusing from mere weakness of mind, without a commission.
15. Maintenance ordered without a commission or reference.
16. No objection, that the return does not state, whether lucid intervals.
17. Traverse of right. As to the propriety of a double issue.
18. Pleading a traverse.
19. Real estate cannot be sold for debts by order on petition.
20. No costs of commission, traversed with success.
21. Traverse of right.
22. Access by one entitled in default of appointment refused.
23. Liberal application of the property to secure every comfort.
24. Master not to be committee. The appointment refused on agreement to divide the profits, &c.
25. Committee's agreement for working coal established.
26. Fair application as to execution of commission not discouraged.
27. Whether a mere stranger can traverse.
28. Right to traverse under the statute.
29. Commissioners' power to summon witnesses.
30. Traverse by one interested under a contract.
31. Execution of the commission.
32. Next of kin committee of the person.
33. Not confined to strict insanity.
34. No absolute title to leasehold by an order.
35. No order, even for creditors, reducing the lunatic to want.
36. Lunatic under judicial proceeding abroad not within the statute 36 Geo. 3.
37. Fair contract not set aside; especially if re-instatement impracticable.
38. Issue, whether defendant was a lunatic at the execution of the contract; whether executed in a lucid interval, &c.
39. Act in lucid interval valid.
40. Lucid interval defined. Proof on party alleging it.
41. Necessary repairs not allowed without a previous order.
42. Receiver, where no committee can be got; but as committee.
43. After two verdicts, establishing it, Issue. Superseding.
44. Expenditure without previous application not allowed.

45. Order for payment after death, on petition in life, of lunatic.
  46. Return of general incapacity quashed. No *Melius Inquirendum*.
  47. Commission applied to incapacity distinct from lunacy: the proper Return unsound mind.
  48. Privilege to be present at the execution of the commission against him.
  49. Order to deliver lunatic to the committee: *Habeas Corpus* not necessary.
  50. No special verdict.
  51. *Non compos* explained.
  52. Notion of the moon's influence erroneous.
  53. Established throws the proof on the party.
  54. Commitment for contempt by a pamphlet.
  55. Debts not paid out of funds not liable, except for his accommodation, and clearly a sufficient maintenance.
  56. Commission on application of a stranger.
  57. Relations preferred as committee. Wife committee of the person with a relation.
  58. Residue invested in government annuity for maintenance on the Master's Report.
  59. No equity for next of kin on redemption of land-tax by the produce of decaying timber cut by order.
  60. Distinction as to the *Lord Chancellor's* management of the property.
  61. No equity between heirs *ex parte paternâ* and *maternâ* on the application of the property of one estate to the other.
  62. Jurisdiction distinct.
  63. Traverse of right. Effect as to costs.
  64. Usually intrusted to the Keeper of the Great Seal.
  65. Private examination to ascertain the wish to traverse.
  66. Jurisdiction distinct: usually the Keeper of the Great Seal.
  67. Verdict of unsound mind equivalent: mere incapacity not.
  68. Incapacity evidence of unsound mind.
  69. Alienee's right to traverse.
  70. } Execution of commission at the residence: whether it
  71. } can be altered.
  72. Distinction between the writs to the sheriff and escheator.
  73. Will of a resident in a receptacle for lunatics established on evidence of competence.
  74. Duplicate of lost commission.
  75. Order in a case of weak mind and small property, to prevent a commission.
1. Committee of lunatic's estate not permitted to pass his accounts without inquiry, what money in his hands from time to time. Master to state particular circumstances. *Ex parte Catton*. - - - - -
  2. Brother of lunatic, committee of the estate, had managed it nine years before the Commission; during which time there were considerable savings: to pay

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- interest; though alleged, he made no use of it; unless particular circumstances to justify that. *Ex parte Chumley.* - - - - - I. 156
- Costs to committee of lunatic refused; because he had not passed his accounts regularly; though no fraud. *Ex parte Clarke.* - - - - - I. 296
- Lunatic is to have every comfort his situation and fortune will admit of without any regard to expectants. *Ex parte Chumley.* - - - - - I. 296
- Waste in the statute, providing for lunatics, means destruction; not that, from which tenant for life impeachable is restrained. - - - - - I. 461
- The statute of lunatics does not introduce any new right in the Crown; the words "*waste and destruction*" in it are to be construed in the ordinary, not the technical, sense. - - - - - II. 71
- Where timber makes part of the general rental of an estate, in case of lunacy it would be a breach of duty not to manage it in the usual manner. - - - - - II. 71
- Under the statute the Crown commits the care of lunatics to some great officer, not of necessity the *Chancellor*. The warrant confers no jurisdiction, but only a power of administration. The appeal is to the King in Council. II. 71
- In managing the estate of a lunatic the general principle is to attend solely to the interest of the owner without any regard to the succession. - - - - - II. 72
- In administering the estate of a lunatic the *Chancellor* may apply personal estate in payment of debts to any extent; and is to take every advantage, that tends fairly towards ordinary improvement; considering only the immediate interest of the proprietor: but, consistently with that, alteration of property is, as far as possible, to be avoided; and great care must be taken, that nothing extraordinary is attempted; as purchasing estates, disposing of interests, engaging in adventures, &c. - - - - - II. 73
- A trustee, found a lunatic by the Master's Report, cannot be ordered to convey under the Statute 4 Geo. 2. c. 10, unless a commission of lunacy has issued. *Ex parte Gillam.* - - - - - II. 587
- A person, found a lunatic by a competent jurisdiction abroad, may be considered a lunatic here. - - - - - II. 588
- Bankruptcy of the committee of the person of a lunatic is a sufficient cause for removing him on account of the fund for maintenance: but the custody of the person will not be changed, if the Master finds it proper with regard to the comfort of the lunatic, that it should continue. *Ex parte Mildmay.* - - - - - III. 2
- Stock ordered to be transferred under the Stat. 36 Geo. 3. c. 90, the trustee being of unsound mind, though no commission had issued; and having actually refused to

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| transfer; the refusal proceeding from mere weakness of mind. <i>Simms v. Naylor.</i> - - - - -   | IV. 360     |
| 15. Upon petition, praying a reference to the Master as to the state of the plaintiff and her fortune and directions for her maintenance, the property being too small to bear a commission of lunacy, an order was made upon affidavits, without a reference, for payment of the dividends for the two ensuing quarters. <i>Eyre v. Wake.</i> -   | IV. 795     |
| 16. Upon a search of precedents it was held no objection to the return of an Inquisition, finding a person lunatic, that it does not state, that the lunatic has or has not lucid intervals. <i>Ex parte Wragg, Ex parte Ferne.</i> -  | V. 450      |
| 17. A traverse to the return to an Inquisition finding a person lunatic is a right by law: though the <i>Lord Chancellor</i> is not dissatisfied with the return upon the evidence. The order was therefore suspended for the purpose of taking the traverse. Upon the return of the traverse to the Inquisition of lunacy, finding that the party was a lunatic at the time of her marriage and at the time of taking the Inquisition, but at that time (the verdict) was not a lunatic, the commission was superseded: but the <i>Lord Chancellor</i> doubted the propriety of such a double issue. <i>Ex parte Wragg, Ex parte Ferne.</i> - | V. 450. 832 |
| 18. Manner of pleading a traverse to an Inquisition finding a person lunatic. - - - - -  | V. 452      |
| 19. The <i>Lord Chancellor</i> cannot upon a petition in lunacy order part of the lunatic's estate to be sold for payment of his debts, to prevent a bill by the creditors. <i>Ex parte Smith.</i> - - - - -   | V. 556      |
| 20. No costs to the party, taking out a commission of lunacy, which is traversed with success; however meritorious the case: the property never coming to the possession of the Crown, there is no fund. <i>Ex parte Ferne.</i> -  | V. 832      |
| 21. Traverse to an Inquisition, finding a person lunatic, is <i>de jure</i> , not matter of favour. - - - - -  | V. 833      |
| 22. Access to a lunatic by a person, entitled upon the death of the lunatic in default of appointment by her, to see, whether she was in a state to exercise the power, refused. <i>Ex parte Lyttleton.</i> - - - - -  | VI. 7       |
| 23. A liberal application of the property of a lunatic is to be made, to secure every comfort his situation will admit. <i>Ex parte Baker.</i> - - - - -   | VI. 8       |
| 24. The Court will not appoint a Master in Chancery to an office, in respect of which he will be liable to account; as, committee of a lunatic's estate. The Court refused to appoint a person committee of a lunatic, upon the circumstances; particularly, that he had agreed to give part of the profits to another. <i>Ex parte Fletcher.</i> -  | VI. 427     |
| 25. Agreement by the committee of a lunatic, that coal under the lunatic's estate should be worked by the owner of the adjoining land, established under the circumstances. <i>Ex parte Tabbert.</i> - - - - -   | VI. 428     |

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Any fair and reasonably provident application as to the execution of a commission of lunacy is not discouraged: but in this instance the petition, being wholly groundless, was dismissed with costs. <i>Ex parte Ward.</i> -	VI. 579
Whether a mere stranger, having no interest, would be permitted to traverse an Inquisition of lunacy, <i>quære. Ex parte Ward.</i> - - - - -	VI. 579
Right to traverse an Inquisition of lunacy under the Stat. 2 Edw. 6. c. 8. s. 6. - - - - -	VI. 580
Commissioners of lunatics have a power of summoning witnesses, as incident to their office. - - - - -	VI. 784
A person, having an interest under a contract with the lunatic, permitted to traverse. <i>Ex parte Hall.</i> -	VII. 261
The Lord Chancellor inclined to quash the Inquisition; the commission not having been executed near the place of abode; and an order, that the lunatic should have due notice, having been disobeyed. <i>Ex parte Hall.</i> -	VII. 261
The old rule, that the next of kin of a lunatic, if entitled to his estate upon his death, was not to be committee of the person, is not now adhered to. <i>Ex parte Cockayne.</i> - - - - -	VII. 591
The commission of lunacy is not confined to strict insanity; but is applied to cases of imbecility of mind, to the extent of incapacity, from any cause: as disease, age, or habitual intoxication. <i>Ridgeway v. Darwin.</i> -	VIII. 65
The Lord Chancellor cannot by an order in lunacy make an absolute title to the lunatic's leasehold estate. <i>Ex parte Dikes.</i> - - - - -	VIII. 79
The Lord Chancellor will not even for creditors make an order in lunacy, the effect of which must be to put the lunatic in a state of absolute want. <i>Ex parte Dikes.</i>	VIII. 79
A lunatic abroad under a judicial proceeding in nature of a commission of lunacy is not within the Statute 36 Geo. 3. c. 90. s. 3. <i>Sylva v. Da Costa.</i> - -	VIII. 316
A Court of Equity will not interfere to set aside a contract, over-reached by an Inquisition in lunacy, if fair and without notice; especially where the parties cannot be re-instated. <i>Niell v. Morley.</i> - - - - -	IX. 478
Upon a bill for specific performance of a contract, over-reached by a commission of lunacy, the plaintiff not having traversed the Inquisition, an issue was directed, whether the defendant was a lunatic at the execution: if so, whether he had lucid intervals; and whether the contract was executed during a lucid interval; the difficulties in executing the contract, which was for the sale of an estate vested in the lunatic, viz. that the price was to be fixed by persons to be nominated, not appearing strong enough to preclude the previous inquiry, with a view to performance: the plaintiff being willing to take the title. <i>Hall v. Warren.</i> - - - - -	IX. 605
Acts by a lunatic, done during a lucid interval; valid. -	IX. 610

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40. General lunacy being established, the proof is thrown upon the party alleging a lucid interval; and must establish, beyond a mere cessation of the violent symptoms, a restoration of mind, sufficient to enable the party soundly to judge of the act. - - - - -	IX.	611
41. Repairs, made without a previous order, though reported necessary, not allowed to the committee of a lunatic's estate. <i>Anon.</i> - - - - -	X.	104
42. Where no one could be procured to act as committee of a lunatic, a Receiver was appointed, with a salary; but to be considered, and give security, as committee. <i>Ex parte Warren.</i> - - - - -	X.	622
43. Issue directed upon a lunacy, established by two verdicts. To supersede a commission, it is not necessary, that the mind should be restored to its original state: competence to common purposes, as to make a Will of personal estate, is sufficient. But the absence of the disorder, especially if of a dangerous tendency, must be satisfactorily proved by the evidence of persons, having competent knowledge of the whole subject, not only as to the present state of the party, but with reference to all the former evidence. <i>Ex parte Holyland.</i> - - -	XI.	10
44. Expenditure by the committee of a lunatic's estate without a previous application not to be allowed. <i>Ex parte Marton. Ex parte Hilbert.</i> - - - - -	XI.	397
45. Order after the death of a lunatic for payment of a debt, viz. an attorney's bill upon a retainer, over-reached by the lunacy, and no report of debts, if the petition is presented in the life of the lunatic: but the debt must be established at law. <i>Ex parte M'Dougal.</i> - - -	XII.	384
46. Return to a commission of lunacy, that the party is so far debilitated in his mind as to be incapable of the general management of his affairs, quashed; and a new commission issued: a " <i>Melius Inquirendum</i> " not issuing in lunacy. <i>Ex parte Cranmer.</i> - - - - -	XII.	445
47. The commission of lunacy applicable to incapacity from causes distinct from lunacy; as old age: but the Return, if not in the words of the commission, must have equivalent words; and in such case the proper Return is, that the party is of unsound mind; so that he is not sufficient for the government of himself, &c. <i>Ex parte Cranmer.</i> - - - - -	XII.	445
48. Privilege of the party, who is the subject of a commission of lunacy, to be present at the execution. <i>Ex parte Cranmer.</i> - - - - -	XII.	445
49. Order, that a person, against whom a commission of lunacy was established, should be delivered up to the committee. <i>Habeas corpus</i> not necessary. <i>Ex parte Cranmer.</i> - - - - -	XII.	445
50. No special verdict upon a commission of lunacy. - - -	XII.	450
51. Explanation of " <i>Non compos mentis.</i> " - - -	XII.	450



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52. In cases of lunacy the notion, that the moon has an influence, erroneous. - - - - - XII. 452
53. Insanity having been once established, proof of recovery is upon the party: otherwise the insanity must be established by proof applying to the particular date. - XIII. 88
54. Commitment in the jurisdiction of lunacy for a contempt, by the publication of a pamphlet. Ignorance of the contents will not excuse the printer. *Ex parte Jones.* XIII. 237
55. No order upon petition in lunacy for payment of the lunatic's debts out of funds, not within the reach of his creditors, except for his accommodation, and it clearly appears, that he will have a sufficient maintenance. *Ex parte Hastings.* - - - - - XIV. 182
56. Commission of lunacy in a proper case granted upon the application of a stranger; and without regard to his motive: the lunatic being a natural child; and his mother opposing it. *Ex parte Ogle.* - - - - - XV. 112
57. In the appointment of committee of a lunatic relations, unless some specific objection, preferred to strangers. The wife appointed committee of the person, not alone, but jointly with a relation. *Ex parte Le Heup.* - XVIII. 221
58. Residue of a lunatic's property beyond his debts invested in a Government Annuity for his maintenance upon the Master's report, that it was for his benefit. *Ex parte Stonard.* - - - - - XVIII. 285
59. Land-tax on a lunatic's estate redeemed by order out of the produce of decayed timber, ordered to be cut for payment of debts under the Master's report, that it was for his benefit. No equity for a charge in favour of the next of kin. *Ex parte Philips.* - - - - - XIX. 118
60. Distinction in lunacy. The *Lord Chancellor*, acting under a special commission, does what is for the lunatic's benefit; taking the advice and assistance of the presumptive representatives in managing the property; thus cutting timber, or selling real estate to pay debts, &c.; not regarding the different forms of disposition: the power over each species of property upon a lucid interval being the same. - - - - - XIX. 123
61. Timber on a lunatic's estate *ex parte paternâ* cut; and applied in discharge of a mortgage on his estate *ex parte maternâ*: no equity between the heirs. - - - - - XIX. 123
62. Distinction between the jurisdiction of the Court of *Chancery* and that in lunacy, under a special warrant from the Crown, usually intrusted to the Keeper of the Great Seal. *Sherwood v. Sanderson.* - - - - - XIX. 280
63. Traverse of verdict of unsound mind under a commission, being the right of the party, cannot be refused; and prevents the Crown's taking the custody, and consequently allowing the costs of the proceedings, however meritorious: but they were given out of a fund of the lunatic in Court, in a cause, on the principle, on which the Court protects persons in a state of incapacity,

though adult, and not objects of a commission; assigning guardians, &c. The costs of the traverse also, though not of course, allowed: the lunatic having been permitted herself to traverse after her personal examination. *Sherwood v. Sanderson.* - - -

XI

64. The Keeper of the Great Seal usually the person, to whom the care of lunatics is intrusted. - - -

XI

65. The private examination for the purpose of a traverse of a verdict of lunacy under a commission is merely to ascertain the wish of the party to exercise the right of traverse. - - -

XI

66. Jurisdiction in lunacy distinct from the Court of *Chancery*; though usually in the Keeper of the Great Seal, under a special warrant of the Crown. - - -

XI

67. Verdict of unsound mind equivalent to idiotcy or lunacy: but mere incapacity to manage his affairs will not alone support the commission. - - -

XI

68. Incapacity to comprehend the most simple proposition of figures evidence of unsound mind: to be estimated with reference to age, situation, &c. - - -

XI

69. Right of alienee of lunatic to traverse, - - -

XI

70. Commission of lunacy uniformly executed at the residence of the party; for that purpose his mansion-house; if none, his last place of abode. No instance of exception, where he was within the realm. Convenience of witnesses, &c. no ground for exception. Most improper to bring him into *Middlesex* for the purpose of executing the commission there. *Ex parte Baker.* - - -

XI

71. As to the jurisdiction, after a commission of lunacy has issued, to make any alteration as to the place of execution, *quære.* *Ex parte Baker.* - - -

XI

72. In lunacy the old writ to the sheriff did not require a view of the party; as the writ to the Escheator did as to an idiot. - - -

XI

73. Will of a resident in a receptacle for lunatics established upon the then state of his mind, compared with antecedent declarations: distinction, if not then competent. - - -

XI

74. On the accidental loss of a commission of lunacy, after Inquisition found, order for a duplicate commission, and the Inquisition, which was recovered, to be annexed to it. *Ex parte Raine.* - - -

XI

75. To prevent a commission in a case of weak mind and small property, order, that, though no proof of a debt should be made by the party or a committee, the Master shall be at liberty to receive any proof, satisfactory to him, by analogy to the practice of taking the answer of a person of weak mind by guardian. *Herbert v. Matthews.* - - -

XI

See *Bail* 4. *Bankrupt* 37. (*Partner* 9.) *Bill to perpetuate Testimony* 2. *Fraud* 38. *Heir* 1. *Infant* 27. 38. 40. *Ne exeat Regno* 38. *Receiver* 15. *Representative* 1. 5. 13. *Scandal* 10. *Will* 199.

**MAGAZINE.**

*See Copyright 8.*

**MAGISTRATE OF A COLONY.**

*See Evidence 14.*

**MAINTENANCE.**

1. Against a direction for accumulation, and without inquiry, whether for the benefit of the infants. (See the note, Vol. V. page 199 a.)
  2. } Against a direction for accumulation on consent of the
  3. } legatee over. (See the note, Vol. V. page 199 a.)
  4. Confirmation of Report, on motion, irregular.
  5. Limited with reference to circumstances and another provision.
  6. Large under circumstances.
  7. For the time past.
  8. To grand-children without a direction; and for the time past.
  9. Though the interests contingent, and accumulation, &c. but not on petition.
  10. Not without consent of legatee over.
  11. Implied for the interval between marriage and twenty-one.
  12. On legacy to a child payable at a future day.
  13. Not out of interest of a legacy to grand-children, when the youngest shall attain twenty-one.
  14. Not, if instead of survivorship there is a limitation over.
  15. Not on legacies to grand-children at twenty-one, though the father not of ability; being given over with interest.
  16. To the residuary legatee, not an accounting party, the fund clear, pending the account.
  17. Increased on circumstances.
  18. Where allowed against a direction for accumulation.
  19. For the time past.
  20. Trustees not having exercised their power to apply dividends, &c. inquiry, whether it would have been reasonable, &c.
  21. No interest on arrears.
  22. By interest of small legacies, paid to the mother; the father abroad, embarrassed.
  23. Generally for all children not limited to those entitled to the capital.
1. Devise to an infant grandson at twenty-one, with accumulation in the mean time; and similar limitations in case of his death under twenty-one to his sisters. Their father being dead, having left all his property, which was considerable, to his wife, who married a person in low circumstances, maintenance was decreed, without an inquiry, whether it was for the benefit of

the infants; the Court judging of that (a). *Greenwell v. Greenwell.* - - - - -

2. Residuary bequest to a very large amount in favour of infant grand-children, payable at twenty-one or marriage, with survivorship; the interest to accumulate, and be paid with the capital; and, in case of the death of all before the time of payment, over to their mother absolutely. The father's income, though considerable, bearing no proportion to the fortune bequeathed, and there being several children, the Court directed maintenance, taking the consent of the mother (a). *Cavendish v. Mercer.* - - - - -

3. Residuary bequest in favour of infant grand-children, payable at twenty-one or marriage, or to the issue of those dead, with survivorship, and accumulation till the time of payment, and a limitation over absolutely in case of the death of all without issue before that time. The father, in consequence of bankruptcy, being wholly unable to maintain his children, maintenance was directed by the Court taking the consent of the persons, to whom the property was given over (a). *Fendall v. Nash.* - - - - -

4. Irregular to confirm reports as to maintenance on motion.

5. A direction by Will to apply so much interest as might be necessary towards the maintenance and education of the testator's grand-children upon the decease of their respective mothers, the residue to accumulate for them all, was confined to so much as should be actually necessary, regard being had to their situation at the death of their mother: their father having by his Will left them a considerable property, with a provision for maintenance. *Rawlins v. Goldfrap.* - - - - -

6. A large allowance for maintenance and education ordered under circumstances; but with reluctance. *Ex parte Petre.* - - - - -

7. Maintenance allowed for the time past. *Sisson v. Shaw.*

8. Maintenance decreed to grand-children out of the fortune bequeathed to them by their grand-father, though no direction for it in the Will; and for the time past (a). *Collis v. Blackburne.* - - - - -

9. Maintenance allowed in the case of children and grand-children; though the interests were contingent with reference to the case of survivorship; accumulation directed; and no express authority for any application during minority, except for the younger children, surviving the eldest, in the event of his death under twenty-one, without issue. The Court refused to make the order on petition; and directed a bill to be filed (a). *Fairman v. Green.* - - - - -

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(a) See the note, Vol. V. page 199 a.

# MAINTENANCE.

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ance not allowed out of legacies to children, over in case of their deaths under twenty-one, at consent of the legatee over. - - -

X. 48

directed maintenance for his sons during minority and for his daughter till twenty-one, or marriage; gave her a legacy, in case she should attain twenty-payable at, and to carry interest from, that time. If married at eighteen, she was allowed maintenance for the interval, until twenty-one. *Chambers v.*

XI. 1

to a child, payable at a future day. Maintenance allowed; though no direction as to interest. - - -

XI. 2

ance out of interest of a legacy to grandchildren, the youngest should attain twenty-one, refused. *Ex v. Lomar.* - - -

XI. 48

bequeathed to infants, with survivorship among them in the event of death under the age of twenty-one. Maintenance, not being directed by the Will, was ordered by the Court; there being a limitation over the death of all under twenty-one to their sister; no other interest in that fund; though a dislegatee by the same Will. The case, in which the Court has given maintenance, has been, where, the being given to the children with survivorship; them, their interest, and the chance of taking whole as survivor, was equal; and no other person stated. *Ex parte Kebble.* - - -

XI. 604

ance not allowed upon legacies by a grandfather to grandchildren, at twenty-one, with interest; but the father was not of ability to maintain them; legacies with the interest being given over in the event of death under twenty-one. *Errington v. Chap-*

XII. 20

the Court can be satisfied, that the fund is clear, allowance for maintenance will be allowed, pending account, to the residuary legatee; not, if an acting party. *Warter v. —.* - - -

XIII. 92

of maintenance, beyond that prescribed by the Court ordered under circumstances: the infants being divided to the fund absolutely among them: viz. a daughter to a portion at twenty-one; and the sons to the residue with survivorship. *Aynsworth v. Pratchett.* -

XIII. 321

ance allowed, against a direction for accumulation only where it is for the benefit of the infants: the residue by surviving being equal; and no other interest to take effect upon any contingency, will be decreed. *Errat v. Barlow.* - - -

XIV. 202

ance allowed for the time past. *Maberly v. Turton.* In particular circumstances, a power to the trustees to pay dividends for maintenance, with the approbation of the parents, or the survivor, and by the death

XIV. 499

of the trustees, or their not acting, their discretion not having been exercised, an inquiry was directed, whether it would have been reasonable and proper in the trustees to apply any and what part of the dividends; having regard to the situation, circumstances, and ability, of the father, and the fortunes of the children. *Ma-berly v. Turton.* - - - - -

XIV. 499

21. Interest not given upon arrears of maintenance any more than upon arrears of a jointure. *Mellish v. Mellish.*

XIV. 516

22. The interest of small legacies ordered to be paid to the mother, for maintenance, upon her affidavit that the father was abroad in very embarrassed circumstances. *Walker v. Shore.* - - - - -

XV. 122

23. A direction for maintenance, in general terms, comprehending all children, not restrained by the bequest of the capital, in terms limited to those living at the date of the Will. *Freemantle v. Taylor.* - - - - -

XV. 363

OF SUIT.—1. } Distinction between strangers and persons in pri-  
2. } vity of estate, or otherwise connected.  
3. Maintenance and Champerty.

1. Bill for discovery, whether the plaintiffs were not employed by one defendant, a Peer, as solicitors to present and prosecute a petition on behalf of the other defendant, complaining of a return to Parliament; and praying that he might be declared duly elected: demurrer allowed on grounds of public policy; and because the discovery could have no effect; and principally because such transactions would amount to Maintenance at Common Law. *Wallis v. Duke of Portland.* -

III. 494

2. Maintenance justifiable from the privity of the parties in estate, or their connection, as master and servant. -

III. 503

3. Maintenance and Champerty. - - - - -

XVIII. 125

See *Champerty.* Grandchild 1. Infant 16. Interest 17. 20. 21. 22. 41. Legacy 27. Parent and Child 1. 2. Pauper 8. Portion. Practice 160. 163. Vesting 10. 28. Will 83.

### MAINTENANCE, SEPARATE.

See *Baron and Feme.*

### MALUM PROHIBITUM.

See *Consideration (Illegal 2.)*

### MANAGER OF WEST INDIA ESTATE.

1. Not to give security faithfully to manage. Ordered to account and consign: but discretion as to application there.

1. Manager of estate in *West Indies* is not to give security faithfully to manage. Ordered to account for produce; and to consign, as far as the management requires it;

## MANAGER.—MARRIAGE.

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but must have a discretion as to what to be applied there. *Morris v. Elme.* - - - - -

I. 139

See *Receiver* 2. *Theatre.*

## MANDAMUS.

See *Bankrupt* (*Certificate* 9.) *Copyhold* 4. *Corporation* 5.

## MANUFACTURER.

See *Fraud* 8.

## MAP.

See *Copyright* 9. 12. 14. 16.

## MARITAL RIGHT.

See *Baron and Feme.* *Representative* 24.

## MARKET.

See *Patent* 3.

## MARRIAGE.

1. Why favoured by the Civil Law.
  2. Exclusive jurisdiction of the Spiritual Court. None in equity on contract for separation except in special cases.
  3. Portions on condition of settlement before marriage, prevented by the negligence of trustees, raised on subsequent settlement.
  4. Of widower with wife's sister voidable: whether void in *Scotland*.
  5. Without due publication of bans criminal by the Canon Law: penalties on the clergyman by that law and statute.
  6. "Without being married" in a Will construed never married.
  7. Injunction against bond to marry, or pay, on public policy.
  8. Actions on mutual promises.
  9. Action on the case on parol promise.
  10. By bans, though neither resident, valid; liability of the clergyman.
  11. Consideration extended to person not directly within it.
  12. By bans legal: though only one resident.
  13. Peculiar construction.
  14. Provision by the statute for notice to the clergyman.
1. Ground of the favour to marriage by the Civil Law. -
  2. The Spiritual Court has exclusive cognizance of the rights and duties arising from the state of marriage: a Court of Equity therefore has no jurisdiction upon a contract for separation between husband and wife simply; much less where it will affect a purchaser or creditor; but the jurisdiction holds in special cases: as where a third party covenants to indemnify the husband against the wife's debts; or a fortune ac-

I. 96



- crues to the wife after separation; or the property is the subject of a trust. *Legard v. Johnson.* - - - Vol. III.
3. Trust term by Will to raise out of the real estate portions for daughters, to be paid on marriage, upon condition, that they should be married with consent of their mother, or, after her death, of the trustees, and that the husband should previously make a settlement, the residue of the personal estate, subject to debts and legacies, to be applied in discharging the portions in ease of the real estate, or for any purpose the trustees might judge most beneficial for the devisee. A marriage having taken place with the consent of the mother and the privity of the trustee, but without any settlement, by the neglect of the trustee, the husband having, before and after the marriage, offered all, that was required of him, and been ready to execute a settlement within the condition, relief was given upon those circumstances by raising the portion upon executing the settlement. *O'Callaghan v. Cooper.* - - - V. 1
4. Whether marriage of a widower with the sister of his deceased wife, in *England* voidable, in *Scotland* is void, *quære.* *Snelham v. Bayley.* - - - V. 534
5. By the *Canon Law*, which is binding on the clergy, it is highly criminal to celebrate marriage without a due publication of bans; which must suppose information as to the residence. Penalties by that law and the statute law upon the clergyman. - - - VI. 4
6. The expression "without being married," in a Will construed according to the common acceptation, "without having ever been married." - - - VII. 4
7. Bond to marry a woman, or pay a sum of money, established at law. Injunction, till the hearing, on grounds of public policy; being an engagement, founded upon expectations under the Will of a third person, (though not a relation) from whom it was kept secret, to marry at his death; and no mutual obligation. *Cock v. Richards.* - - - X. 4
8. Actions would lie upon mutual promises of marriage. - X. 4
9. Action on the case upon a parol promise of marriage. - X. 4
10. Clergyman, celebrating marriage by bans without making the inquiry directed by the Marriage Act, liable to ecclesiastical censure, at least: perhaps to other consequences. The marriage however good: though neither party was resident in the parish. *Nicholson v. Squire.* XVI. 2
11. Consideration of marriage considered as extending to persons not directly within it; viz. to brothers, uncles, and other relations, upon the marriage of a son; as within the contract between him and his father. - XVIII.
12. Marriage by bans legal, though only one of the parties resided in the parish. *Robinson v. Grant.* - XVIII. 2
13. Peculiar construction upon the subject of marriage. - XIX.

## MARRIAGE.

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- |  |                 |
|--|-----------------|
| <p>14. Provisions by the Marriage Act (stat. 26 Geo. 2. c. 23.)<br/>for notice to the clergyman as to the parties, applying<br/>to be married. - - - - -</p> | <p>XIX. 453</p> |
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### BROUAGE.—CONSENT.

BROUAGE.—1. Decree to refund.

- |   |                   |
|---|-------------------|
| <p>1. Decree to refund money obtained by sale of influence in<br/>marriage-brocage. - - - - -</p> | <p>XVIII. 382</p> |
|---|-------------------|

- CONSENT.—1. Of trustees under twenty-one required both as to  
a rent-charge and a legacy.
2. Of trustees not applicable to second marriage of  
a natural daughter, married with testator's  
approbation, and a widow at his death.
3. Not to be withdrawn by adding terms, that do  
not go to the propriety of giving it.
4. On offer of settlement: settlement after marriage  
sufficient.
5. Not dispensed with, though under favourable  
circumstances.
6. Whether given, or reasonably withheld a danger-  
ous jurisdiction.
7. Implied from no dissent and no good reason.
8. May be withdrawn on good reason.
9. Distinctions in equity and at law.
10. Of majority of trustees not sufficient, except one  
withheld unreasonably.
11. Of strangers or their representatives.
12. Of two, the third not consulted, insufficient.
13. Jurisdiction on unreasonable refusal, as a fraud.
14. Observations on *Long v. Dennis*, as going too far.
15. Eleven months after marriage: whether sufficient.
16. That dissent was unreasonable must be shewn.
17. Of majority of trustees: Opinion that it is suf-  
ficient, spurious.
18. Of four executors or the majority required: one  
of two survivors consenting, the other de-  
clining to interfere, inquiry, whether the mar-  
riage suitable, &c.

- |  |                 |
|--|-----------------|
| <p>1. Condition in restraint of marriage under twenty-one<br/>without consent of trustees established both as to a<br/>rent-charge out of real estate and a personal legacy.<br/><i>Stackpole v. Beaumont.</i> - - - - -</p>   | <p>III. 89</p>  |
| <p>2. Condition by Will, requiring consent of trustees to mar-<br/>riage, not applicable to the second marriage of a na-<br/>tural daughter, who had married between the date of<br/>the Will and the death of the testator, having ap-<br/>proved it; and was a widow at his death. <i>Crommelin</i><br/><i>v. Crommelin.</i> - - - - -</p> | <p>III. 227</p> |
| <p>3. Consent to marriage once given shall not be withdrawn<br/>by adding terms, that do not go to the propriety of<br/>giving the consent. - - - - -</p>  | <p>X. 242</p>   |
| <p>4. Consent to marriage on the offer of a settlement: a<br/>settlement after marriage is sufficient. - - - - -</p>   | <p>X. 244</p>   |

5. Real and personal estate given by Will on marriage with consent and approbation, with a limitation over in case the devisee should marry without the full consent, &c. of the trustees, &c. or refuse to execute such settlement as they should think proper. Previous consent and settlement not dispensed with, though under favourable circumstances; the treaty with consent of the two acting trustees, preparing the settlement avowedly on behalf of all, without authority, but with slight knowledge and no dissent, of the third; who had not acted, except proving the Will, and a few other instances; and execution deferred only from collateral circumstances: viz. a debt claimed by the two acting trustees. *Clarke v. Parker.* - - - - - XIX. 1
6. Dangerous jurisdiction upon consent to marriage, whether given or reasonably withheld. The individual, meaning to act honestly, may have reasons, which he may refuse to disclose. - - - - - XIX. 11
7. Instances of implied consent to marriage by not expressing dissent, and no good reason suggested; and of relief against withholding consent from a corrupt motive; consent in writing not being required. - - - - - XIX. 11
8. Consent to marriage may be withdrawn upon good reason. XIX. 13
9. Distinctions upon consent to marriage in equity and at law; as a condition precedent, subsequent, and *in terrorem*; with reference to the *Civil Law* as to personal legacies; as to real and personal estate: the effect of a devise over, and a residuary devise, as such, on breach of the condition. - - - - - XIX. 13
10. The opinion, attributed to Chief Baron *Comyns* (1 *Atk.* 375), that the consent of the majority of the trustees is sufficient, spurious. That was never held sufficient without more; as where one withholds his consent for a vicious or unreasonable cause. - - - - - XIX. 15
11. Validity of condition for consent of strangers or their representatives to marriage. - - - - - XIX. 15
12. No instance, that, consent of three trustees to marriage being required, that of two, not consulting the third, would be sufficient. - - - - - XIX. 17
13. Jurisdiction upon the refusal of a trustee to consent to marriage from a vicious, corrupt, or unreasonable cause, as a fraud. - - - - - XIX. 18
14. Observations on the case of *Long v. Dennis* (5 *Burr.* 2052), as going too far against conditions for consent of marriage. The account there of *Burlton v. Humphries*, (*Amb.* 256), corrected. - - - - - XIX. 19
15. Condition for marriage with consent and approbation, with a limitation over on marriage without such consent or approbation: Lord *Hardwicke's* opinion, holding approbation eleven months after marriage sufficient, denied by Lord *Thurlow.* - - - - - XIX. 21

## MARRIAGE.—MARSHALLING.

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16. Trustee for consent to marriage not required to shew his reason for dissent. It must be shewn, that he has unreasonably refused assent. - - - - - XIX. 22
17. The opinion, attributed to Chief Baron *Comyns* (1 *Atk.* 375), that the consent of the majority of trustees to marriage is sufficient, spurious. - - - - - XIX. 24
18. Portion by Will on marriage with consent of the executors, four in number, or the major part of them, their or his executors, &c. One of two survivors consenting, and the other declining to interfere, inquiry directed, whether the intended marriage was suitable; and, if so, a proposal for a settlement to be received. *Goldsmid v. Goldsmid.* - - - - - XIX. 368

See Articles 1. *Baron and Feme.* Bond 2. *Construction* 5. *Contract* 20. 54. 55. 79. *Creditor* 3. *Dower.* *Fraud* 4. 21. *Jurisdiction* 3. *Parent and Child* 10. *Resignation Bond.* *Revocation* 9. *Settlement.* *Ward of Court.* *Will* 136.

## MARRIAGE AGREEMENT.

See *Satisfaction* 32.

## MARRIAGE ARTICLES.

See Articles. *Baron and Feme* (*Adultery* 1.) *Executory Trust* 1. 2. 3.

## MARRIAGE PORTION.

See *Satisfaction* 42.

## MARRIAGE SETTLEMENT.

See *Baron and Feme* 44. 45. 47.

## MARRIAGE WITHOUT CONSENT.

See *Marriage.* *Portion* 13.

## MARRIED WOMAN.

See *Baron and Feme.*

## MARSHALLING.

1. For simple contract creditors against mortgagee, also a specialty creditor.
  2. } Against persons, having a double fund, for those, who
  3. } have but one.
  4. For legatees against descended estates: not against specific devisees, unless subject to debts, &c.
  5. For *paraphernalia* against creditor with a double fund.
  6. Principle: extending vendor's lien to third persons.
  7. At any period: when the case appears; though the Bill not framed for it.
1. Mortgagee of freehold and copyhold estates, also a specialty creditor, having exhausted the personal assets, simple-contract creditors are entitled to stand in his place *pro tanto* against both the freehold and copyhold estates: the case of *Robinson v. Tonge* being overruled. *Aldrich v. Cooper.* - - - - - VIII. 582

2. Instances of the rule, that a person having a double fund, shall not by his option disappoint another, who has only one. - - - - - VIII. 388. 395
3. Principle, that a creditor having two funds, shall take to that, which, paying him, will leave another fund for another creditor. - - - - - VIII. 391
4. Right of legatees to stand in the place of specialty creditors, paid out of the personal estate, against estates descended. Not against specific devisees, unless devised subject to debts or a mortgage. - - - - - VIII. 396, 397
5. The claim to paraphernalia not to be disappointed by the effect of the option of a creditor, having a double fund. VIII. 397
6. General principle of marshalling; that, a party having two funds, his choice shall not have the effect of disappointing another, who has one only: but the latter shall stand in the place of the former. Upon that principle the benefit of the vendor's lien on the estate for the purchase-money extended to third persons. *Trimmer v. Bayne*. - - - - - IX. 209
7. Assets marshalled; if it appears at any period of the cause, that specialty creditors have gone upon the personal estate; though the bill is not framed with that view. *Gibbs v. Ougier*. - - - - - XII. 413

See *Assets*. *Bankrupt* (Dividend 2.) *Creditor* 7. *Legacy* 5. *Vendor and Vendee* 4.

#### MASTER AND SERVANT.

See *Fraud* 7. 30. *Maintenance* (Of Suits 2.)

#### MASTER IN CHANCERY.

See *Lunacy* 24. *Practice* 9. 11. 33. 50. 219. 230. 234. *Will* 19.

#### MASTER OF A SHIP.

See *Ship*.

#### MASTER'S CERTIFICATE.

See *Practice* 246.

#### MEMBER OF PARLIAMENT.

See *Bankrupt* (Privilege 6.) *Demurrer* 7. *Ne exeat Regno* 24. *Practice* 348. *Privilege* 3. *Qualification, &c.* 1.

#### MEMORANDUM.

See *Evidence* (Presumptive 2.)

#### MEMORIAL.

See *Annuity*.

#### MERCHANT.

See *Domicil* 5.

#### MERCHANTS' ACCOUNTS.

See *Limitation* 19. (Time 2. 3. 21. 23.) *Partner* 26.

#### MERCHANTS' CLERK.

See *Lien* 27.

## MERGER.

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### MERGER.

1. By confusion of rights: prevented in equity by intent express or implied.
2. By union of equitable and legal estates equal and co-extensive.
3. Term, that would merge by union with the inheritance, if equitable, attends it.
4. Tenants in tail, infant and adult.
5. Distinction between tenants for life and in tail paying incumbrance.
6. Not of mortgage by union with the fee on presumed intent.
7. { Distinction in law and equity in keeping up a charge
8. { on the estate of the person entitled to it, on the intent actual or presumed.
9. Of a charge only where indifferent to the owner, whether it should subsist, or not.

At law and in equity, where there is a confusion of rights, there is an immediate merger: that is prevented in equity by the intention either express or implied; as in the case of an infant entitled to an estate and also to a charge upon it; the rights remain distinct; because more beneficial. - - - - -

II. 264

Where the equitable and legal estates, equal and co-extensive, unite in the same person, the former merges: therefore, where the former descends *ex parte paternâ*, the latter *ex parte maternâ*, upon their union the paternal heir has no equity. *Selby v. Alston.* - - -

II. 339

Where a term would merge by its union with the inheritance in the same person, if he has in the one the legal, in the other the equitable, estate, the term will attend the inheritance. Therefore, where tenant for years subsequently to his Will contracted to purchase the inheritance, and died before conveyance, the residuary legatees have no claim under the term against the heir. *Capel v. Girdler.* - - - - -

IX. 509

The case of merger, with reference to tenants in tail, infant and adult. - - - - -

XI. 277

If tenant for life, paying off an incumbrance, in that transaction merges the security by taking an assignment, connecting it with the legal estate of inheritance, upon that transaction *primâ facie* there is no charge. In the case of tenant in tail, as he represents the inheritance, the presumption is, that, whether he takes an assignment, or not, the debt is gone; unless there is evidence of an intention to continue it a charge. - - -

XV. 173

Mortgage not merged by union with the fee: the actual intention, not established by the acts of the party, presumed from the greater advantage against merger in favour of the personal representative. *Forbes v. Moffatt.*

XVIII. 384

A person, becoming entitled to an estate, subject to a charge for his own benefit, may keep up the charge.

Distinction upon this subject in law and equity : the latter sometimes holding a charge extinguished, where it would subsist at law ; and sometimes preserving it, where at law it would be merged ; depending on the intention, actual or presumed, of the person, in whom the interests are united. Where, as in most instances, it is, with reference to the party himself, of no sort of use to have a charge on his own estate, it will sink without some act by him to keep it on foot. - -

XVIII. 3

8. Owner of a charge is not, as a condition of keeping it up, called on to repudiate the estate. His election is, not to take the charge or the estate, but whether, taking the estate, he means the charge to sink, or continue distinct. - - - - -

XVIII. 39

9. In all cases of a charge merging it was perfectly indifferent to the party, in whom the interests had united, whether the charge should, or should not, subsist. -

XVIII. 39

See *Copyhold*. *Trust* 31. *Use* 1. *Waste* 20.

MESNE PROFITS.

1. Whether action for them lies before judgment in ejectment.

1. Whether action for mesne profits can be maintained before judgment in ejectment, *quære*. - - -

VI. 9

See *Account*. *Limitation of Account*. *Trespass* 1.

MESSENGER.

See *Bankrupt* (*Assignee* 17.)

MILL, CUSTOM OF.

See *Practice* 77.

MINE.

1. Inference of abandonment from *non-user* not applicable.  
2. Whether under a mere reservation of Royal Mines the Crown can grant a license to enter for working.

1. The inference of abandonment of a right from *non-user* not applicable to the case of mines. - - -

XVI. 3

2. Whether under a mere reservation of Royal Mines, without a right of entry, the Crown can grant a license to enter on the land for the purpose of working them, *quære*. - - - - -

XVI. :

See *Account* (*Mesne Profits* 2.) *Copyhold* (*Timber* 4.)  
*Injunction* 8. 15. 43. *Practice* 376. *Presumption* 17.  
*Vendor and Vendee* 15. 25.

MISREPRESENTATION.

1. Whether relief to one acting on representation to another.

1. Whether a party, acting upon the faith of a representation, not to him, or with a view to deceive him, but to a



## **MISREPRESENTATION.—MODUS.**

**389**

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third person, would be entitled to relief against the person making it, *quære.* - - - - -

**XVIII. 504**

*See Contract (Specific Performance 57.) Fraud (Jurisdiction 5.) Principal and Agent 32. Trust 97.*

## **MISTAKE.**

1. By executor, improperly compromising an issue: permitted to try it on paying costs.
2. By expenditure on the estate of another, not interfering.
3. In the subscription for raising an annuity fund for the members of a society at too low a rate.
4. In description, not preventing the revocation of an annuity and substitution of another.

Executor, having under a misconception of a Will at the trial of an Issue upon a debt entered into an improper compromise with the creditor, expressly subject to the approbation of the Court, was permitted to try the Issue, paying the costs. *Legh v. Holloway.* -

**VIII. 213**

Equity from expenditure upon another's estate through inadvertence or mistake; that person seeing it, and not interfering. - - - - -

**XII. 85**

Society for raising an annuity fund for the members: the rate of subscription being too low, though the subsisting fund was equal to the annuities, then payable, and no adequate remedy by the articles, inquiries were directed; first, to ascertain the state of the society, the defect of the plan, &c. secondly, to provide a remedy: viz. by additional subscription, adequate to the object by paying the arrears, and providing for the present and future annuities. *Pearce v. Piper.* - - -

**XVII. 1**

Revocation of an annuity, and substitution of another, notwithstanding a wrong description; no other annuity or instrument appearing. *Benyon v. Benyon.* - -

**XVII. 34**

*See Arbitration (Mistake 1.) Bankrupt (Commission 11.) Bond 1. 8. 10. Contract 17. 87. 100. (Specific Performance 9. 27. 32.) Deed 3. Evidence 19. 20. 21. Fraud (Jurisdiction 4.) Legacy 43. Lien 28. Practice 199. 231. 241. 242. 293. 294. Registry 3. 5. Will 184. (Mistake 14.)*

## **MISTAKEN DESCRIPTION.**

*See Devise 45. Legacy 58. 59. 61. Mistake 4.*

## **MISUNDERSTANDING.**

*See Charity 80.*

## **MIXTURE OF PROPERTY.**

*See Confusion of Property.*

## **MODUS.**

*See Tithe 10. 12. 13. 23. 24.*

## MONEY.

1. From real estate may pass as personal on the intent.
1. Money, arising from real estate, may pass under the description of personal estate upon the intention. - -

VIII.

See *Estate (Conversion.) Injunction* 21. *Power (Appointment)* 30.) *Will* 272. 298.

## MONEY, CONVERSION OF.

See *Assets*.

## MONEY IN COURT.

See *Payment into Court. Practice* 4. 175. 370.

## MONEY LOST AT PLAY.

See *Bankrupt (Loss at Play)* 1.) *Pleading* 16.)

## MONEY TO BE INVESTED.

1. Found in its original state considered personal: except part, having been invested in land, which was sold, and the money invested for another purchase to the same uses.
2. Qualification of the order for payment under statute 39 & 40 Geo. 3. to tenant in tail.
3. Payment under the statute 39 & 40 Geo. 3. refused in a doubtful case.
4. No order for payment under statute 39 & 40 Geo. 3. without a previous inquiry as to incumbrances.
5. Under statute 39 & 40 Geo. 3. the fund must be clear; and time for a Recovery.
6. After request, considered as invested, though no request.
1. Personal estate under marriage articles to be invested in land, or government, or other, securities: the Court, finding it in its original state, considers it as personal; but part having been laid out in land, which was settled, and afterwards sold, and the produce invested in stock, till a proper purchase of land could be found to be settled to the same uses, that was considered as land. *Bristow v. Warde.* - - - - -
2. Under the statute 39 & 40 Geo. 3. c. 56, authorizing payment of money, to be laid out in land to be settled, to the tenant in tail, the order was thus qualified; in case he should be living on the second day of the ensuing Term; and an inquiry as to incumbrances was directed. *Ex parte Bennet.* - - - - -
3. The Court refused upon an *ex parte* petition to order money to be paid under the statute 39 & 40 Geo. 3. c. 56; the subject involving a doubtful question, viz. the construction of a trust of an estate for lives, to permit two sisters to receive the rents for their lives; remainder to the heirs of their bodies; and in case they

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V

## MONEY TO BE INVESTED.—MORTGAGE.

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should die without issue, from and after their decease, over. <i>Ex parte Sterne.</i> - - - - -	VI. 156
No order can be made under Lord <i>Eldon's</i> act, 39 & 40 Geo. 3. c. 56, authorizing the payment of money, in trust to be laid out in land, to be settled to the tenant in tail, without a previous inquiry as to incumbrances. <i>Ex parte Hodges.</i> - - - - -	VI. 576
Under the statute, enabling tenant in tail of land to be purchased to take the money, the Court takes care that the fund is clear. To obtain the order under that act in Term the application must be made in time sufficient to admit of a Recovery. <i>Ex parte Frith.</i> - - -	VIII. 609
As between the representatives money considered land under a direction in a settlement with all convenient speed after request to lay it out; though no request was made; upon the construction, all the limitations being adapted to real uses, and other circumstances. <i>Thornton v. Hawley.</i> - - - - -	X. 129
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### MONOPOLY.

See *Contract 1. (Illegal 11.)*

### MORTGAGE.

1. Equity of redemption of a term cannot be taken in execution.
2. Redemption after twenty years on accounts.
3. Distinguished from pledge.
4. Bill of redemption after fifty years possession on acknowledgments and accounts.
5. Redemption refused as to part from laches: opened as to part in other hands on accounts, &c.
6. Mortgagee cannot have account of rents, &c.; though the security insufficient.
7. Made clearly the personal debt of the purchaser, heir exonerated.
8. ) Not made the personal debt of the heir by mere cove-
9. ) nant on assignment: so as to a purchaser.
10. Foreclosure by one *cestui que trust* as to his share.
11. Lands, originally held under old mortgages pass by general devise; though no release of the equity of redemption appears.
12. Reference under the statute 7 Geo. 2. on admission, not evidence.
13. )
14. ) Assignment without privity of mortgagor.
15. )
16. Mortgagee in possession under a purchase of the estate for life must apply the surplus rents in discharge of interest in arrear.
17. Mortgagee protected by taking an old term prior to dower.
18. Mortgagee denying notice of plaintiff's title, neither alleged nor proved, inquiry refused, beyond his advances.

19. Of *West India* estate, expressed as a trust: assignee considered as mortgagee. Limitation of account.
20. Second mortgagee, having the deeds, without notice of the first, not preferred on negligence alone, without fraud.
21. Second mortgagee without notice getting in a satisfied term, protected. At law assignment not to be presumed without some dealing upon it. Consequences of the doctrine of Courts of Law.
22. No redemption for creditors by trust deed; unless collusion, &c.
23. Stat. 7 Geo. 2, confined to foreclosure.
24. Mortgagee deprived of, and compelled to pay, costs for misconduct.
25. Mortgage of freehold with covenant for better security to procure admission, &c. of copyhold, and in the mean time to stand seised, &c. A primary mortgage of both..
26. After foreclosure and sale, injunction against proceeding at law.
27. Jurisdiction under Statute 7 Geo. 2, the same as on hearing.
28. Necessary costs under Will of mortgagor allowed to mortgagee.
29. Assignment without the mortgagor subject to the account.
30. Stipulation for collateral advantage, tending to usury, not allowed: but mortgagee may have a Receiver, Bailiff, &c.
31. Notice to mortgagor of assignment not necessary.
32. No set-off for devisee of equity of redemption of interest on legacy from mortgagee to mortgagor against interest on the mortgage.
33. Mortgagee not to charge for receiving rents; though he may have a Receiver at mortgagor's expense: acquiescence ineffectual; the mortgagee being the attorney.
34. Effect of *lis pendens*: subsequent mortgagees bound by foreclosure; though not parties.
35. Default of payment under decree for redemption as a foreclosure.
36. Heir of mortgagor a necessary party to bill of second mortgagee, though only of part, and under different title.
37. Under trust to raise money confined to the remedies of mortgagee.
38. Subsequent mortgagee must redeem entirely.
39. Postponed on leaving the deeds with mortgagor only on fraud.
40. Subsequent, with the legal estate got in, preferred.
41. } Ground of redemption.
42. }
43. Duty of mortgagee in possession.
44. Action opens foreclosure.
45. In *Ireland* sale instead of foreclosure.

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46. On sale with consent of subsequent mortgagees the costs on deficiency first paid.
  47. *West India*: consignee on mortgagee refusing to swear that any thing was due.
  48. Defendant to bill of foreclosure, in contempt, cannot have a reference on motion under the Statute.
  49. Receiver on mortgagee, who cannot ascertain the debt.
  50. Equity of redemption within the exception in the Annuity Act.
  51. Time not enlarged on bill of redemption.
  52. Redemption on acknowledgment of mortgage within twenty years in transactions not with the heirs of mortgagor.
  53. Dismission of bill for redemption not a foreclosure.
  54. Foreclosure against infant.
  55. Limit of equity of redemption. Exceptions to be stated in the bill.
  56. Redemption barred by twenty years possession. Exception.
  57. Effect as to redemption of accounts by mortgagee, not communicated.
  58. Annual rests refused against mortgagee in possession: directed only under special circumstances; and never for a broken period.
  59. On foreclosure by devisee of mortgagee, the mortgage-deed being lost, re-conveyance with indemnity and costs.
  60. Construction, as mortgage; one deed importing purchase.
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  2. Mortgage may be redeemed after twenty years, if during that period the mortgagee has treated it as redeemable; as by keeping accounts upon it. - - - - - II. 84
  3. Mortgage and pledge distinguished. - - - - - II. 378
  4. Bill against the devisee of mortgaged premises by the heir of mortgagor for discovery and redemption; charging acknowledgments, that the estate was held in mortgage, and that accounts had been kept: plea of possession for fifty years under conveyances from the mortgagee ordered to stand for an answer. *Lake v. Thomas*. - III. 17
  5. A mortgaged estate getting into different hands, redemption was refused as to part from length of time; and opened as to the other part; accounts having been kept, and there being a devise of it as a mortgage. - - - III. 22
  6. Mortgagee cannot have an account of rents and profits received by the mortgagor; though the security, being upon an estate for lives, is become insufficient. *Colman v. The Duke of St. Albans*. - - - - - III. 25
  7. Estate sold subject to a mortgage was exonerated in favour of the heirs by the personal estate of the purchaser; his acts having clearly made it his personal debt. *Woods v. Huntingford*. - - - - - III. 128

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8. Mortgaged estate descends: the mortgagee pressing, the security is assigned: a mere covenant by the heir upon that occasion for payment does not make it his personal debt. - - - - -	III. 131
9. A mere covenant by the purchaser of a mortgaged estate to indemnify the vendor does not make it his personal debt. - - - - -	III. 131
10. A trustee laid out the money of different persons on a mortgage: foreclosure by one <i>cestuy que trust</i> as to his share (a). <i>Montgomerie v. The Marquis of Bath.</i> -	III. 560
11. Lands, originally held under old mortgages, pass by a general devise; though no release of the equity of redemption appears. <i>Attorney-General v. Bowyer.</i> -	III. 714
12. A reference under the Statute 7 Geo. 2. c. 20, must proceed upon admission of the principal and interest due upon the mortgage; and the Master cannot admit evidence. <i>Huson v. Hewson.</i> - - - - -	IV. 105
13. Assignment of a mortgage without the privity of the mortgagor: the assignee takes subject to the account between the mortgagor and mortgagee. <i>Matthews v. Wallwyn.</i> - - - - -	IV. 118
14. As between mortgagee and persons claiming under him without the privity of the mortgagor they cannot add to what is due: settle the account; or turn interest into principal. - - - - -	IV. 128
15. After an assignment of a mortgage payments to the mortgagee without notice must be allowed by the assignee. The Registry, the premises being in <i>Middlesex</i> , is not notice for this purpose. Tender after the bill filed of the balance, deducting the payments to the mortgagee, with costs, deprived the assignee of subsequent costs. <i>Williams v. Sorrell.</i> - - - - -	IV. 389
16. Mortgagee, having permitted the tenant for life to run in arrear for the interest, purchases the estate for life; and takes possession under that purchase: he is bound to apply the surplus rents and profits beyond the current interest in discharge of the arrear; and in the account under a bill of foreclosure was charged accordingly. <i>Lord Penrhyn v. Hughes.</i> - - - - -	V. 99
17. Mortgagee may protect himself against a claim of dower by taking an assignment of an old mortgage term, prior to the right to dower. <i>Wynn v. Williams.</i> - - -	V. 130
18. A defendant claiming as mortgagee, and by his answer denying notice of the plaintiff's title, which was neither alleged by the bill nor proved, an inquiry for the purpose of affecting him with notice was refused, first, upon a petition to vary the minutes, and again upon a rehearing. An inquiry as to what sums he had advanced	

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(a) *Quare*, see the note, Vol. III. page 561.

- upon the security of the mortgage, and at what times respectively, was granted. *Hardy v. Reeves.* - - -
- Under a conveyance of a *West India* estate, in effect a mortgage, though expressed as a trust, an assignee was held liable to account as a mortgagee; and not entitled to charge as trustee or agent. Therefore the accounts, settled with the executors of the mortgagor since his death in 1791, were declared not to be considered settled: the prior accounts to stand; with liberty to surcharge and falsify; but not farther back than 1785. Upon appeal the decree varied, 1st, by confining the liberty to surcharge and falsify to the accounts of the defendant himself, the assignee; without prejudice to any suit against the representatives of the assignor. 2dly, by confining the declaration against the right to commission to the period of residence in *England*; leaving open to investigation before the Master the right to commission, while in the *West Indies*; which point was not made by the pleadings. As to opening the accounts, settled with the executors of the original owner of the estate since his death, the decree was affirmed.
- Chambers v. Goldwin.* - - - - - V. 834. IX. 254
- Not a general rule in equity, that a second mortgagee, who has the title-deeds, without notice of a prior incumbrance, shall be preferred: negligence alone will not postpone the first: it must amount to fraud. - VI. 183
- In equity a second mortgagee without notice getting in a satisfied term may protect himself: the conscience being equal. The *Lord Chancellor* of opinion, that at law an assignment of such term is not to be presumed without some dealing upon it. Consequences of the late doctrine of Courts of Law on this subject. - VI. 184
- Creditors under a deed of trust cannot have a decree for redemption against a mortgagee; unless a special case; as collusion; that the trustee refuses, &c. In this case the bill by the creditors prayed, not a redemption, but a sale; to which the mortgagee would not consent; but submitted to be redeemed; and the bill was dismissed.
- Troughton v. Binkes.* - - - - - VI. 573
- No order under the statute 7 Geo. 2. c. 20. s. 2; the bill not being confined to a mere foreclosure; but including also another subject. *Bastard v. Clarke.* - - - VII. 489
- Mortgagee, though entitled to costs in general, deprived of costs occasioned by improper conduct; and even compelled to pay costs. *Detillen v. Gale.* - - - VII. 583
- Mortgage of freehold estate with a covenant, for better securing the payment, to procure admission and to surrender a copyhold estate, and in the mean time to stand seised in trust for the mortgagee. A primary mortgage of both estates; and the freehold not first applicable.
- Aldrich v. Cooper.* - - - - - VIII. 382



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26. After foreclosure and sale of the mortgaged estate injunction granted to restrain the mortgagee from recovering the difference at law. <i>Perry v. Barker.</i> - - -	VIII.	527
27. The jurisdiction under the statute 7 Geo. 2. c. 20. s. 2, giving the effect of a decree of foreclosure by a short order, is the same as if the cause was brought to a hearing. The time for payment may therefore be enlarged on the usual terms. <i>Wakerell v. Delight.</i> - - -	IX.	86
28. Mortgagee allowed the costs of procuring administration to an incumbrancer under the Will of the mortgagor, as a necessary party to the foreclosure. <i>Hunt v. Fournes.</i>	IX.	70
29. Assignment of a mortgage without the intervention of the mortgagor is subject to the account between the mortgagor and mortgagee. - - - - -	IX.	264
30. Mortgagee cannot originally stipulate for a collateral advantage; as that, if interest is not paid at the end of the year, it shall be converted into principal; or, that the mortgagee shall be receiver, with a commission; as tending to usury: but he may stipulate for a receiver, to be paid by the mortgagor; and may appoint a bailiff, &c. - - - - -	IX.	271
31. Notice to the mortgagor of the assignment not necessary to its validity. - - - - -	IX.	411
32. Devisee of an equity of redemption not entitled to have an arrear of interest upon a legacy from the mortgagee to the mortgagor set-off against the interest due upon the mortgage. - - - - -	IX.	563
33. General rule, that a mortgagee shall not charge for receiving the rents personally; though he may have a Receiver at the expense of the mortgagor. Liberty was therefore given to surcharge and falsify an account, settled with that allowance; acquiescence having no effect; the mortgagee being the attorney of the mortgagor. <i>Langstaffe v. Fenwicke.</i> - - - - -	X.	405
34. Effect of <i>lis pendens</i> : subsequent mortgagees of an equity of redemption bound by a decree of foreclosure; though not made parties. An Exception by a purchaser on that ground was disallowed; and a specific performance decreed; with costs. <i>Bishop of Winchester v. Paine.</i> - - - - -	XI.	194
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37. Mortgagee under a trust to raise money by sale or mortgage has only the remedies of a mortgagee; and cannot call upon the trustees for execution of the trust. <i>Palk v. Lord Clinton.</i> - - - - -	XII.	48

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55. Limit of the equity of redemption either upon the Statute, or by analogy to it. Cases of exception, infancy, &c. as in Ejectment, to be stated in the bill. - - - - -	XIX.	184
56. Equity of redemption barred by possession for twenty years; unless circumstances are proved by the mortgagor, shewing an acknowledgment of his title by the mortgagee within that period; as accounts delivered by the mortgagee: if by parol evidence, it must be clear and unequivocal. Accounts, kept by mortgagee's receiver, in a distinct book, and delivered to the mortgagor, but without authority, will not have that effect. <i>Barron v. Martin</i> . - - - - -	XIX.	327
57. As to the effect of accounts, kept by the mortgagee in his own books, without any communication on the subject with the mortgagor, to keep the right of redemption open, <i>quære</i> . - - - - -	XIX.	337
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 3. By deposit of part of the deeds with written evidence that it was a security on the whole.  
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 5. By deposit of lease.  
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11. By deposit of deeds.

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13. } By deposit of deeds disapproved. When ex-  
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15. }

16. By agreement for further advance on a former deposit of deed continued.

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Equitable mortgage by a deposit of part of the title-deeds; with evidence, not merely parol, but in writing, that the object was to create a security upon the whole. *Ex parte Wetherell.* - - - - -

XI. 398

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Equitable mortgage by deposit of deeds. *Ex parte Mountfort.* - - - - -

XIV. 606

Equitable mortgage by a deposit of deeds; covering subsequent advances upon evidence, that they were made upon that security. *Ex parte Langston.* - - - - -

XVII. 227

Equitable mortgage by a deposit of deeds upon an advance of money without a word passing. - - - - -

XVII. 230

Equitable mortgage by deposit of deeds not favoured; especially when contradicting a written instrument. *Ex parte Combe.* - - - - -

XVII. 369

Equitable mortgage by deposit of deeds. *Monkhouse v. The Corporation of Bedford.* - - - - -

XVII. 380

Equitable lien on copyhold estate by a deposit of the copy of Court Roll. *Ex parte Warner.* - - - - -

XIX. 202

The decisions for equitable lien by deposit of title-deeds disapproved. - - - - -

XIX. 203

Equitable mortgage by a deposit of title-deeds established, but disapproved: extended to a subsequent advance by the same person only upon clear proof, that it was upon security of the deposit: not to an advance by a third person, unless connected with some dealing with the estate, and the person holding the deposit a



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| mere trustee, having made no advance. <i>Ex parte Whitbread.</i> - - - - -   | XIX. 209  |
| 15. Equitable mortgage by deposit of deeds, though not now to be disturbed, disapproved; and not extended by inference from a legal mortgage to a subsequent advance. <i>Ex parte Hooper.</i> - - - - -  | XIX. 477  |
| 16. Equitable mortgage by agreement for a farther advance upon a former deposit of a deed continued. - - -   | XIX. 479  |
| <b>TACKING.</b> —1. Not extended to a mortgage of the equity of redemption, taken as executor.   |           |
| 2. Judgment against second mortgagee.  |           |
| 1. The right of the first mortgagee, with the legal estate, to tack as against mesne mortgagees does not cover a mortgage of the equity of redemption, coming to him as executor. <i>Barnet v. Weston.</i> - - - - -   | XII. 130  |
| 2. First and second mortgagees; the mortgagor a bankrupt. The first mortgagee entitled to tack a subsequent Judgment, docketed, though no execution had issued, at the time of the bankruptcy. <i>Baker v. Harris.</i> -   | XVI. 397  |
| See <i>Arbitration</i> 7. <i>Assets</i> 16. <i>Bankrupt</i> 29. ( <i>Election</i> 19.) ( <i>Proof</i> 28.) ( <i>Reputed Owner</i> 4.) <i>Chancery</i> ( <i>Office of Register</i> 1.) <i>Charity</i> 22. 23. 24. <i>Contract</i> 18. 47. 111. ( <i>Specific Performance</i> 61.) <i>Copyhold</i> 6. 7. <i>Deposit</i> 3. <i>Devise</i> 8. 40. ( <i>Revocation</i> 3.) <i>Discovery</i> 2. <i>Exoneration</i> 6. 7. 20. <i>Gift</i> 2. 3. <i>Infant</i> 3. 5. 32. <i>Insolvent Act</i> 1. <i>Interest</i> 5. <i>Joint-tenant</i> 2. <i>Laches</i> 12. 13. <i>Lien</i> 12. <i>Limitation</i> ( <i>Time</i> 18.) <i>Merger</i> 6. <i>Party</i> 5. 10. 17. <i>Practice</i> ( <i>Party</i> 11.) <i>Presumption</i> 13. <i>Priority</i> 2. <i>Purchaser</i> 24. <i>Renewal</i> 4. <i>Revocation</i> 5. 7. <i>Sequestration</i> 5. <i>Tacking</i> 11. <i>Tenant in Common</i> 5. <i>Trust</i> 104. <i>Will</i> 100. 135. 157. 187. ( <i>Revocation</i> 25.) |           |

## MORTMAIN.

- |   |         |
|---|---------|
| 1. Object of the statute.   |         |
| 2. Distinction between the statute and 12 Will. 3, as to <i>Roman Catholics</i> .   |         |
| 3. Trust for perpetual <i>Botanical Garden</i> for the public benefit void.   |         |
| 1. The Statute of <i>Mortmain</i> meant to prevent a person from adding to land already in mortmain by Will. - - -  | II. 241 |
| 2. Difference between the Statute of <i>Mortmain</i> and 12 W. 3. c. 4, concerning <i>Roman Catholics</i> : the former has the words "charge or incumbrance," which are not in the latter. - - - - -  | II. 283 |
| 3. Trust of real and personal estate by Will, for the purpose of establishing a perpetual <i>Botanical Garden</i> , declared void upon the expression of the testator, that he trusted it would be a public benefit. <i>Townley v. Bedwell.</i> - - - - - | VI. 194 |

See *Charity* 7. 27. *Will* 16. 43. 157.

**MOTHER.—NAME.**

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**MOTHER.**

*See Parent.*

**MOTION.**

*See Practice 301. 302. Re-hearing 5.*

**MOURNING RING.**

*See Executor 77.*

**MOVEABLES.**

*See Baron and Feme 96.*

**MULTIFARIOUSNESS.**

*See Pleading 48.*

**MUSIC.**

*See Copyright 17.*

**MUTUAL DEMANDS.**

*See Account 4. Set-off.*

**MUTUAL WILLS.**

*See Will 136.*

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**NABOB OF ARCOT.**

*See Jurisdiction 2.*

**NAME.**

1. Devise to the nearest of his name and blood requires both ; and not satisfied by the King's license.
2. Original not lost by name by Act of Parliament.
3. Effect of license to permit, not impose.
4. Of confirmation.

Devise to the devisor's sister *A.* then unmarried, for life ; with remainders to her first and other sons in tail male ; to her daughters in tail, as tenants in common ; to his sister *B.*, then unmarried, for life, and to her first and other sons in tail : remainder to the first and nearest of his kindred being male and of his name and blood, that shall be living at the determination of the estates before devised, and to the heirs of his body. A person, claiming under the last limitation, must be of the name, as well as the blood ; and the qualification as to the name is not satisfied by having the name, taken by the King's license, previous to the determination of the preceding estates. *Leigh v. Leigh.* - - - -

**XV. 92**

A person, taking a name by Act of Parliament, does not lose his original name ; and might take a legacy by it.

**XV. 100**

The effect of the King's license is only permission to use a name : not imposing it. - - - -

**XV. 100**

Name of confirmation is the real name. - - - -

**I. 416**

*See Profession (Religious 1.)*

## NAME, MISTAKEN.

See *Will* 14.

## NATURAL CHILD.

See *Bastard. Grand-child. Interest* 41. *Parent and Child* 1. *Will* 208.

## NAVIGATION SHARES.

1. In the river *Avon*, by the Statute of *Anne*, real estate, and subject to dower.
1. The shares in the navigation of the river *Avon* under the Statute 10 *Anne* are real estate, and subject to dower. *Buckeridge v. Ingram.* - - - -

II. 6

See *Will* 157.

## NEAREST OF BLOOD.

See *Proximity.*

## NE EXEAT REGNO.

1. Between foreigners. Answer read; the application not being in nature of affidavit for bail, but to discretion: not originally applicable between subjects.
2. Affidavit must be positive.
3. Against resident in the *West Indies*.
4. On matter of account. General affidavit of belief of intent to quit the kingdom sufficient.
5. No *subpoena*. On personal service the party must appear; and then apply to supersede; not on his affidavit.
6. Analogy to special bail.
7. Refused.
8. Not on undertaking for indemnity. Equitable demand in nature of debt necessary.
9. } In alimony only for arrears and costs.
10. }
11. Analogy to bail.
12. For arrears of alimony and costs.
13. } Positive affidavit of intent to go abroad necessary; that
14. } the debt will be endangered, sufficient.
15. A high Prerogative Writ.
16. Affidavit, that the debt will be endangered, sufficient.
17. A high Prerogative Writ, applied to private right with great caution.
18. For a bailable demand: viz. an admitted balance.
19. Discharged after bail twice and action discontinued.
20. Not discharged on denying intent to go abroad.
21. Not on belief without the ground shewn.
22. On Prerogative to restrain or recal a subject.
23. High Prerogative Writ for State purposes; extended to private transactions; confined to equitable debt: affidavit positive: information, &c. only on pure account: application prompt.
24. Not to restrain a Member of Parliament going to *Ireland*.
25. To restrain going to *Scotland*.



26. Original object.
  27. Order in nature of it by the *Exchequer*.
  28. Not on information, &c. of intent, &c.
  29. In account, though bail might be had.
  30. In alimony limited to arrears.
  31. Not on legal demand against an attorney, as privileged.
  32. In account; though bail might be had. Positive affidavit of the debt conclusive: of threat, &c. to go abroad necessary.
  33. On affidavit, not by plaintiff, to information, &c. of intent to quit the kingdom, according to its nature.
  34. Prayer for the writ not essential: nor affidavit of debt, on Report confirmed.
  35. No notice.
  36. By Committee of lunatic to restrain *East India* captain from the voyage: that the debt will be endangered, sufficient.
  37. Discharged: Plaintiff resident in *Scotland*: affidavit of intent not positive, &c.
  38. Affidavit must be positive, except as to balance of account.
  39. Analogy to bail not universal.
  40. The writ always states the ground.
1. Writ of *Ne exeat Regno*, obtained by one *French* emigrant against another, discharged upon the circumstances, appearing upon the affidavits in support of the Bill, and upon the Answer; which may be read: the application not being in the nature of an affidavit to hold to bail, but to the discretion of the Court; applying a remedy, not in its origin distinctly applicable to private transactions between subject and subject. It is very delicate to apply it as against foreigners; and it would be a necessary term, that it shall be simply a case of equity. *De Carriere v. De Calonne*. - - - - - IV. 577
  2. Affidavit to support a writ of *Ne exeat Regno* must be positive. *Roddam v. Hetherington*. - - - - - V. 91
  3. Writ of *Ne exeat Regno*, obtained by a resident here against a resident in the *West Indies* upon a demand arising there, when the Answer came in, was discharged under the circumstances, with costs against the *prochein amy* of the infant plaintiff: but upon the admissions in the Answer the defendant was ordered to give security to abide the decree. *Roddam v. Hetherington*. - - - - - V. 91
  4. The writ of *Ne exeat Regno* issued properly: the subject being matter of account. A general affidavit of belief of the defendant's intention to quit the kingdom is sufficient, without the circumstances, upon which that belief is founded. (See No. 14, 20, 1, 3, 8, 32, 3, 7, 8.) *Russell v. Asby*. - - - - - V. 96
  5. Upon an application for the writ of *Ne exeat Regno* no *subpœna* is served: but upon personal service of the writ the party is bound to appear and to put in his An-

	swer; and then he may apply to supersede the writ; but not upon his affidavit. <i>Russell v. Asby.</i> - -	Vol. Page V. 96
6.	Analogy between the applications for the writ of <i>Ne exeat Regno</i> and to a Judge to hold to special bail. - -	V. 97
7.	The writ of <i>Ne exeat Regno</i> refused: the circumstances not affording a sufficient ground. <i>Gardiner v. Edwards.</i>	V. 591
8.	A writ of <i>Ne exeat Regno</i> refused upon an undertaking for an indemnity. To obtain it there must be an equitable demand in the nature of a debt actually due. <i>Cock v. Ravie.</i> - - - - -	VI. 283
9.	Writ of <i>Ne exeat Regno</i> issues in the case of alimony; but only for sums actually due, and costs. <i>Shaftoe v. Shaftoe.</i> - - - - -	VII. 171
10.	Writ of <i>Ne exeat Regno</i> issues in the case of alimony; but only for sums actually due, viz. arrears and costs. <i>Dawson v. Dawson.</i> - - - - -	VII. 173
11.	Analogy between the writ of <i>Ne exeat Regno</i> and bail. -	VII. 174
12.	Writ of <i>Ne exeat Regno</i> for arrears of alimony and costs. <i>Oldham v. Oldham.</i> - - - - -	VII. 410
13.	Affidavit for a writ of <i>Ne exeat Regno</i> must state an intention to go abroad; that the defendant will hide himself is not sufficient. It must be positive, that he is going abroad; or to some declaration, that he is, by himself, not a third person. <i>Oldham v. Oldham.</i> -	VII. 410
14.	To obtain a writ of <i>Ne exeat Regno</i> the affidavit must be positive as to the intention to quit the kingdom, or declarations to that effect. (See No. 4.) It is sufficient, that the debt will be endangered; without stating, that it is to avoid the jurisdiction. <i>Etches v. Lance.</i> -	VII. 417
15.	<i>Ne exeat Regno</i> a high prerogative writ. - - -	VII. 417
16.	To obtain a writ of <i>Ne exeat Regno</i> , it is sufficient, that the affidavit states, that the debt will be endangered; without alleging, that the purpose of going abroad is to avoid the demand. <i>Tomlinson v. Harrison.</i> - -	VIII. 32
17.	Writ of <i>Ne exeat Regno</i> a high prerogative writ; and applied to cases of private right with great caution and jealousy. - - - - -	VIII. 33
18.	Writ of <i>Ne exeat Regno</i> for a demand, upon which bail might be had; viz. the admitted balance of an account; on the ground, that, if bail was given, the plaintiff, disputing the balance, would be entitled to an account; and the defendant could not put him to his election to sue at law or in equity except upon terms. <i>Jones v. Sampson.</i> - - - - -	VIII. 593
19.	Plaintiff, having twice held the defendant to bail, obtained a writ of <i>Ne exeat Regno</i> ; discontinuing the action. The writ discharged. <i>Amsinck v. Barklay.</i> -	VIII. 594
20.	Writ of <i>Ne exeat Regno</i> upon declarations, or facts, as evidence of the intention to go abroad, not discharged upon affidavit, denying the intention. <i>Amsinck v. Barklay.</i> - - - - -	VIII. 594

# NE EXEAT REGNO.

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21. Belief, without circumstances or declarations, shewing the ground of it, will not sustain a writ of *Ne exeat Regno*. VIII. 597
22. Prerogative by writ of *Ne exeat Regno* to restrain a subject from leaving the kingdom; and by the Great or Privy Seal to recal a subject abroad; and, if not obeyed, to take his property. - - - - - X. 63
23. Writ of *Ne exeat Regno* a high prerogative writ, originally applicable to purposes of State; afterwards extended to private transactions; confined to cases of equitable debt. The affidavit must be as positive as an affidavit to hold to bail; information and belief admitted only upon matter of pure account, as between partners and executors. The application ought to be as prompt as possible. *Jackson v. Petrie*. - - - - - X. 164
24. Writ of *Ne exeat Regno*, to restrain a Member of Parliament going to *Ireland*, refused. *Bernal v. Marquis of Donegal*. - - - - - XI. 43
25. *Ne exeat Regno* to restrain going to *Scotland*. - - - XI. 46
26. Original object of the writ of *Ne exeat Regno* to prevent a subject going to the king's enemies. - - - XI. 46
27. The Court of *Exchequer* grant orders in nature of the writ of *Ne exeat Regno*; applying them only to cases, to which this Court would apply the writ. - - - XI. 46
28. To obtain a writ of *Ne exeat Regno* an affidavit to information and belief of an intention to quit the kingdom, or circumstances, making it necessary, as an order for military officers to join their regiments abroad, not sufficient. *Hannay v. M'Entire*. - - - - - XI. 54
29. In account the writ *Ne exeat Regno* granted; though bail might be had at law. - - - - - XI. 55
30. The writ of *Ne exeat Regno* is in the nature of equitable bail: therefore, in the case of alimony marked only for the arrears actually due; and not carried farther by analogy to the case of a Judge holding to bail for uncertain damages upon a personal tort. *Haffey v. Haffey*. XIV. 261
31. Writ of *Ne exeat Regno*, upon a legal demand against an attorney, on the ground of his privilege, by analogy to the case of equitable demands, refused. *Gardner v. —*. XV. 444
32. Writ of *Ne exeat Regno* upon the concurrent jurisdiction in account; though bail might be had at law. Against a positive affidavit the defendant's affidavit, or evidence of the plaintiff's admission, that no debt is due, will not avail. The affidavit of a threat or intention to go abroad must be positive; not upon information and belief. *Jones v. Alephsin*. - - - - - XVI. 470
33. Writ of *Ne exeat Regno*, on affidavit, not by the plaintiff, to information and belief of intention to quit the kingdom, according to the nature of the information; as, where received from persons of the defendant's family, that they were about to go to the *Isle of Man*. *Col-  
linson v. —*. - - - - - XVIII. 353

34. Prayer for the writ of *Ne exeat Regno* in the bill not essential; nor affidavit of the debt, established by the Master's Report, absolutely confirmed. *Collinson v. —*. - - - - - XVIII. 3
35. No notice of motion for the writ of *Ne exeat Regno*. - XVIII. 3
36. Writ of *Ne exeat Regno* obtained on behalf of a lunatic by his committee on a note, as given for the balance of an account, restraining the captain of an *East India* ship from proceeding on his voyage. That the debt will be endangered is sufficient, without stating, that the object is to avoid the jurisdiction. *Stewart v. Graham*. XIX. 3
37. Writ of *Ne exeat Regno* discharged; as having issued improperly on the affidavit of a plaintiff, resident out of the jurisdiction, in *Scotland*, sworn before a Justice of the Peace there; not positive to a declared intention: a defect not supplied by the avowal in defendant's affidavit of his intention to return to his house of business in *Jamaica*; where alone he has the means of settling the account. *Hyde v. Whitfield*. - - - - - XIX. 3
38. To support a *Ne exeat Regno*, which issues only on an equitable debt, as at law to hold to bail, the affidavit must be positive, except that belief of the balance of an account is sufficient. *Hyde v. Whitfield*. - - - - - XIX. 3
39. The analogy between the writ of *Ne exeat Regno* and aailable writ at law, not universal. The Court of *King's Bench* formerly would not hear defendant to reduce the amount of bail: but this Court always heard defendant, attempting to get rid of the writ. - - - - - XIX. 3
40. The ground, on which the writ of *Ne exeat Regno* issued, is always stated in the body of it. - - - - - XIX. 3
- See *Bail* 5. *Baron and Feme* 3. (*Alimony* 1.) *Payment into Court* 2.

NEGATIVE PLEA.

See *Pleading* 57.

NEGLIGENCE.

See *Forfeiture* 3. *Lackes*.

NEIGHBOUR.

See *Evidence* (*Pedigree* 5.)

NEW TRIAL.

1. } Repeated in civil cases: distinction of criminal; not
2. } of right, but discretion with consent of the Attorney-
3. } General.
4. }
5. For excessive damages the Court guards against death of defendant.
6. } After trial at Bar: distinction at law.
7. }
8. Discretionary; though evidence improperly rejected.
1. Three trials frequent; and a fourth has been granted. IV. 20

## NEW TRIAL.—NEXT OF KIN.

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2. After three ejectments tried in *Ireland*, an issue out of *Chancery* was tried between the same parties upon the same point. A new trial was afterwards granted upon appeal to the *House of Lords*; and after that another ejectment was tried. *Lord Sherborne v. Naper.* - IV. 206, n.
3. There is no question of civil right, that in the ordinary course of the jurisdiction of this country may not go through three inquiries. - - - - - IV. 207
4. In criminal cases a repeated inquiry is not matter of right, but of discretion; and can only be had with the consent of the Attorney-General. - - - - - IV. 207
5. Upon a motion for a new trial for excessive damages, the Court of Law would take care, that the right of the plaintiff should not be prejudiced by the death of the defendant. - - - - - VI. 90
6. No doubt of the right of this Court to grant a new trial after a trial at bar. Principle, that the conscience of the Court must be satisfied. - - - - - IX. 165
7. New trials after trials at bar granted here, when the Courts of law would not grant them. - - - - - IX. 165
8. Discretion to refuse a new trial of an issue; if justice has been done upon the whole; though some evidence may have been improperly rejected at law. - - - XI. 51

See *Evidence* 58. *Fraud* 13. *Issue at Law* 1. *Tithe* 9. *Will* 284.

### NEXT FRIEND.

See *Infant* 22. *Prochein Amy.* *Trust* 91.

### NEXT OF KIN,

1. Brothers, exclusive of nephews, &c. under residuary bequest to "the next of kin in equal degree."
  2. Whether bequest by those words merely should not be confined to nearest of kindred, viz. brothers, &c. excluding nephews, &c.
  3. Technical signification, with reference to the statute.
1. Under a residuary bequest to "the next of kin in equal degree" brothers entitled; excluding nephews and nieces. *Wimbles v. Pitcher.* - - - - - XII. 433
  2. Whether a bequest to "next of kin," without reference to the Statute of Distributions or a division as in case of intestacy, should not be confined to nearest of kindred, as brothers and sisters, excluding nephews and nieces, *quære.* - - - - - XIX. 404
  3. Technical signification of the words "next of kin," with reference to the Statute of Distributions. - - - XIX. 404

See *Baron and Feme* 28. *Bill to perpetuate Testimony* 2. *Charity* 39. *Evidence* 13. *Executor* 36. 37. 39. 40. 41. 52. 55. 56. 57. 58. 59. 60. 79. 88. 89. *Fraud* 22. *Lunacy* 59. *Relations.* *Representative* 7. 26. *Residue.* *Resulting Trust* 1. *Trust* 7. 8. 14. 20. 21. 40. 41. 44. 48. 53. 54. 55. 56. 57. 59. 74. 98. 113. *Voluntary Settlement, &c.* 2. *Will* 48. 173. 251. 252. 253.

## NOBLEMAN.

See *Domicil* 5. *Peer.* *Practice* 200. *Privilege* 1.

## NOMINAL PARTNER.

See *Partner* 60. 62.

## NON-ACCESS.

See *Legitimacy* 1.

## NON-CLAIM.

See *Fine* 5. *Presumption*.

## NON-COMPOS.

See *Practice* 314.

## NON DECIMANDO.

See *Tithe* 16.

## NON SANE MEMORY.

See *Lunacy*.

## NON-USER.

See *Mine* 1.

## NOTARY PUBLIC.

See *Evidence* 14.

## NOTES, BANK.

See *Will* 298.

## NOTE, LOST.

See *Jurisdiction* 33.

## NOTE, PROMISSORY.

See *Interest* 19. 28. 43. *Jurisdiction* 17.

## NOTICE.

1. By vendee's stating, that he has bought, and vendor's silence.
  2. Distinction between dower and mesne incumbrance; preventing the preference by getting in the legal estate in the latter case.
  3. To drawer necessary though acceptor bankrupt.
  4. Want of it to intermediate parties available to one having notice.
  5. Actual, or constructive; as to an agent: requisites to that.
  6. Of tenant's possession to a purchaser is notice of the interest.
  7. Implied.
  8. Of lease to purchaser is notice of the contents.
  9. Reasonable for the Court or Jury.
  10. Of tenant's interest to a purchaser from possession.
  11. Specific performance against subsequent purchaser at an advance, with notice.
  12. Of tenant's interest to purchaser from possession.
  13. To drawer necessary; though acceptor bankrupt.
1. Vendee says he has bought: vendor is silent: conclusive notice to a third person. - - - - -
  2. Distinction between the cases of dower and a mesne incumbrance as to the effect of notice; preventing the

## NOTICE.—NUISANCE.

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preference by getting in the legal estate in the latter case; not in the former. - - - - -	X. 261
Bankruptcy of acceptor does not dispense with the necessity of notice to the drawer. (See No. 13.) - - -	XI. 412
A person, affected by notice, has the benefit of the want of notice by intermediate parties. - - - - -	XI. 478
Notice actual, or constructive; as, to an agent; which must be, while concerned for the principal; and in the course of the transaction, which is the subject of the suit. - - - - -	XIII. 120
Notice to a purchaser of possession by a tenant is notice of his interest. (See No. 10, 12.) - - - - -	XIII. 120
Notice implied from the nature of the transaction. - - -	XIII. 120
Notice to a purchaser, that there is a lease, is notice of its contents. <i>Hall v. Smith.</i> - - - - -	XIV. 426
Reasonable notice a question for the Court or Jury. - -	XVI. 56
The possession of a tenant is notice to a purchaser of the actual interest he may have, either as tenant; or farther, as in this instance, by an agreement to purchase the premises. <i>Daniels v. Davison.</i> (See No. 8. 12.) - -	XVI. 249
Specific performance of a contract to purchase enforced against a subsequent purchaser, at an advanced price, with notice; who was decreed to convey on payment to him of the price, for which the plaintiff contracted. <i>Daniels v. Davison.</i> - - - - -	XVII. 433
The possession of a tenant is notice to a purchaser of the actual interest he may have, either as tenant; or farther, as in this instance, by an agreement to purchase the premises. <i>Daniels v. Davison.</i> (See No. 8. 10.) - -	XVII. 433
Bankruptcy of acceptor does not dispense with notice to the drawer. (See No. 3.) - - - - -	XVIII. 21

See *Bank of England* 4. *Bankrupt* 35. *Baron and Feme* (Separate Property 5. 6.) *Bill of Exchange. Contract* 12. 14. 36. *Copyhold. Lien* 3. *Mortgage* 15. 18. 20. 21. 31. (*Equitable* 6.) *Partner* 54. *Pleading* 13. 42. *Practice* 5. 192. 225. *Purchase* 6. 7. 9. 13. 27. 34. *Registry* 1. 4. 6. *Release* 1. *Term* 3. 4. *Trust* 42. 97. 101. 111. *Voluntary Settlement, &c.* 17. 18.

### NUDUM PACTUM.

See *Consideration* 4. *Contract* 79.

### NUISANCE.

1. Jurisdiction by Injunction against offensive and unwholesome process in trade not without trial; regulating the time of trial of Indictment depending, as against relators: whether as against defendants?
2. Injunction with caution against trade offensive and in some degree unwholesome, not a legal nuisance.
3. Jurisdiction on public nuisance in highway or harbour: abatement, if on the King's soil: if not a trial.
4. Not by manufacture of bricks.



5.	At common law by using articles recently discovered.	
6.	At common law a powder-mill: if working before the Statute 12 Geo. 3, not liable to the penalties.	
1.	Jurisdiction by Injunction on Information by the Attorney-General, at the relation of individuals, against a nuisance by an offensive and unwholesome process in trade, not exercised without a trial at law; regulating according to justice the time of trial of an Indictment depending, and removed by <i>certiorari</i> into the <i>King's Bench</i> from the <i>Assizes</i> , as against the relators; whether as against the defendants <i>quære. Attorney-General v. Cleaver.</i>	XVIII. 211
2.	Instances of trades offensive, and in some degree unwholesome, not legally a nuisance: a sugar-house, brew-house, &c. Injunctions in such cases cautiously granted, and not <i>ex parte.</i>	XVIII. 217
3.	Jurisdiction upon public nuisance in a highway or a harbour; if upon the King's soil, the Crown may abate; if not, the fact must be tried by a Jury.	XVIII. 218
4.	Manufacture of bricks not a nuisance.	XVIII. 219
5.	Nuisance at Common Law by using articles of recent discovery, as gunpowder or gas, so as to cause danger to the public.	XIX. 623
6.	Construction of the statute 12 Geo. 3. c. 61; not authorizing a powder-mill, which would be a nuisance at Common Law; though, as working at the commencement of the Act, not liable to the penalties imposed by it.	XIX. 623

See *Injunction* 60.

NUNC PRO TUNC.

See *Practice* 366.

OBLIGOR AND OBLIGEE.

See *Bond. Principal and Surety.*

OCCUPANT.

1.	Executor special occupant.	
2.	Requisites.	
3.	Not special of a rent: but executor may be <i>quasi</i> occupant.	
1.	Executor may be a special occupant.	VII. 440
2.	Requisites to occupancy; a vacant possession, and a filling up of it by some person, who meant to occupy.	VII. 442
3.	No special occupancy of a rent; being an incorporeal hereditament; but, if the heirs, &c. are named in the grant, the executor is said to be <i>quasi</i> occupant.	VII. 448

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2. Sale of command of Government Packet.

Non-user is a misdemeanor punishable by a common Information. - - - - -

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Bond to secure an annuity to the obligor's mother for life: the condition reciting, that by the recommendation of friends he had been appointed to succeed his father in the command of a Government Packet, but on the express condition of his making an allowance for the support of his mother, &c.; the *Master of the Rolls* inclined to dismiss the bill filed against his executrix; but gave the plaintiff leave to bring an action. *Hartwell v. Hartwell*. - - - - -

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1. Surrender not supplied for illegitimate child: but maintenance, if legacy from the father payable at twenty-one.
2. No remedy for the parish against executor of parent, leaving children without maintenance.
3. Recovery by father and son, tenants for life and in tail, to raise money for the father and re-settle, giving the son only an estate for life, remainder in strict settlement. Effect of his acquiescence.
4. Jurisdiction, representing the King, as *parens patriæ*, controlling the father's right.
5. Injunction without affidavit, against removing a Ward of Court even to *Scotland*.
6. ) Jurisdiction against parents, preaching irreligion to
7. ) their families, or in constant habits of drunkenness, &c.
8. ) Parents purchasers for their issue.
9. )
10. Guardian and maintenance on father's ill-treatment.
1. The Court will not supply a surrender for a natural child; but, if it has a legacy from the father payable at twenty-one, will allow maintenance. - - - - -
2. A father may leave his children without a maintenance; and the parish has no remedy against the executor. -
3. A son, tenant in tail in remainder, when just of age, in 1769, joined his father, tenant for life, in a recovery, for the purpose of raising £3000 for the father, and re-

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settling the estate, the son taking back only an estate for life, with remainder to his first and other sons, &c. Whatever equity he might have had against that settlement was lost by his marriage and acquiescence till after the death of his father in 1793; though under the circumstances there was no probability of issue. Upon that ground a bill by the trustees under a general trust for his creditors, claiming as purchasers under the stat. 27 Eliz. c. 4. was dismissed, without deciding, whether they could sustain that character; or, how far a settlement, merely as being voluntary, is affected by the statutes of Elizabeth. *Brown v. Carter.* - - -

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4. Jurisdiction of the Court of *Chancery*, representing the King, as *parens patriæ*, to control the right of a father to the possession of his child under circumstances. Order, restraining him from removing the child, or doing any act towards, or for the purpose of, removing it, out of the jurisdiction. The Court would not give the possession to the mother, having withdrawn from her husband. *De Manneville v. De Manneville.* - - -
5. No affidavit necessary to obtain an order, that a child, a Ward of Court, shall not be taken out of the jurisdiction, even to *Scotland.* - - -
6. Jurisdiction to prevent parents preaching irreligious doctrines in the presence of their families. - - -
7. Jurisdiction to remove a child from its father, in constant habits of drunkenness and blasphemy, poisoning the infant's mind. - - -
8. Husband and wife purchasers by the marriage for their children. - - -
9. Parties to a marriage settlement are purchasers for their issue. - - -
10. Order for a guardian and maintenance for infants upon ill-treatment by their father. *Whitfield v. Hales.* -

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## PARLIAMENT, MEMBER OF.

1. Costs against the officer for an arrest.
  1. Costs against an officer, violating the privilege of Parliament from arrest. - - - - - XVIII.
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## PAROL EVIDENCE.

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## PARTICEPS CRIMINIS.

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## PARTICULAR ESTATE.

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## PARTITION.

1. Not prevented by settlement.
2. Equitable jurisdiction.
3. Costs apportioned.
4. Agreement for it established against a conveyance and devise.
5. Future contingent title no objection.
6. } Of a house.
7. }
8. Commissioners equally divided.
9. Distinguished from exchange.
10. Whether under power to exchange.
11. Among joint proprietors by analogy to the writ.
12. On bill the interests, &c. ascertained by the Court.
13. Never affects third parties.
14. Commission from the difficulty at law.
1. The estate of a tenant in common cannot be so settled on marriage of one as to prevent the right of the others to make partition. - - - - - II. 1

# PARTITION.

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Partition is a proceeding at common law : but <i>Chancery</i> entertains suits for it ; though no original jurisdiction ; and no express authority is given by the statute as to joint-tenants. - - - - -	II. 124
On a bill for partition the costs of executing the commission and of all necessary proceedings in the cause must be defrayed by the parties in proportion to their interests. <i>Calmady v. Calmady.</i> - - - - -	II. 568
Agreement for partition established against a conveyance ; and against a devise ; operating as a revocation by depriving the testatrix of all interest in the estate devised. <i>Knollys v. Alcock.</i> - - - - -	V. 648
No objection to a partition, that other persons may come <i>in esse</i> , and be entitled. <i>Wills v. Slade.</i> - - - - -	VI. 498
A Commission for partition of a house decreed. <i>Turner v. Morgan.</i> - - - - -	VIII. 143
Partition of a house by writ. - - - - -	VIII. 145
Under a Commission of partition to four Commissioners two different returns were made ; each by two Commissioners. The Court would not act upon either ; and another Commission issued to five Commissioners. <i>Watson v. The Duke of Northumberland.</i> - - - - -	XI. 153
Distinction between exchange and partition. - - - - -	XI. 476
Whether a power to exchange can be executed by partition, <i>quære.</i> - - - - -	XI. 476
Decree for partition among several joint proprietors ; and no objection from a covenant not to inclose without general consent, rights of common, and the inequality and uncertainty of the shares in proportion to other estates. The Decree directed a reference to the Master to inquire, whether the plaintiff and defendants, or any and which, are entitled ; and in what shares, according to the respective values of the other estates ; and then a Commission to divide accordingly ; the costs of the partition to be borne by the parties in proportion to the value of their respective interests ; and no previous or subsequent costs ; by analogy to the proceeding at law. <i>Agar v. Fairfax.</i> - - - - -	XVII. 533
Upon a Bill for partition the interests and proportions to be ascertained by the Court ; not the Commissioners. - - - - -	XVII. 543
A partition never affects third parties : rights of common, for instance. - - - - -	XVII. 544
Commission to make partition not under the authority of any Act of Parliament ; but from the difficulty, attending partition at law ; where the plaintiff must prove his title, as he declares, and also the titles of the defendants ; by analogy to the equitable jurisdiction in the case of dower. - - - - -	XVII. 522

See *Devise* (Revocation 1. 2.) *Power* 7. 21. 22. *Revocation* 2. 3. 21. 22. 26.

## PARTNER.

1. Execution for a moiety under judgment against one: on failure of one equitable distribution to joint creditors.
2. No survivorship on joint expenditure on leasehold or freehold in the way of trade.
3. Contract for advantage to one in the way of trade not usurious.
4. By parol contract.
5. Discharge of assets.
6. Bound by execution of one in presence of the others.
7. Action against all; though one an infant.
8. Joint property cannot be held against the joint creditors under execution for separate debt.
9. Right of assignee, &c. of separate creditor subject to the joint account.
10. Whether good-will survives.
11. Profits after death of one joint property.
12. Plea in abatement of partner abroad.
13. Not liable on separate transaction without agreement.
14. Separate property by registry and employment of a ship.
15. Distinct partnerships of three, and two of them: the property on bankruptcy according to the order and disposition.
16. Joint interest in a lodge of Freemasons: suit by some, representing the others.
17. Modes of dissolution.
18. Injunction against survivor.
19. Power to bind the firm: authority or approbation necessary, if the transaction is in its nature separate.
20. No specific execution of agreement for partnership.
21. By purchase of real estate equally, to be used in trade, the nature of the property not varied.
22. Retirement: effecting a transfer of the property.
23. Effect of dissolution by retirement upon the joint creditors.
24. Equity on dissolution.
25. Separate execution: whether subject to the account.
26. Claim of debt, as received by retired partner. Exception as to merchants' accounts in the Statute of Limitations. Laches.
27. Payment to one a discharge.
28. Cannot sue separately.
29. On dissolution by bankruptcy of one the assignees entitled to share in subsequent profits of the original capital: whether, if applied jointly with other funds.
30. Implied obligations among partners.
31. Partnership after determination continuing as to third persons.
32. Survivorship of the legal, not the beneficial, interest. Executor's right to a sale.
33. Whether good-will survives.
34. Signature of one binding.



35. Assignment of one for separate debt subject to the joint debts.
  36. Right on bankruptcy of one to an account, not a proportion of specific articles.
  37. Unlimited partnership determinable without notice.
  38. Partnership without stipulation in equal moieties.
  39. Affidavits after answer on motion for injunction, &c.; as in waste.
  40. Equitable right of partners subject to the joint debts.
  41. Without articles, and for indefinite period, may dissolve without notice.
  42. Consequence of dissolution a general sale and account.
  43. Continuing trade after dissolution with the joint property must account.
  44. Renewing lease in his own name clandestinely a trustee.
  45. Distinction as between themselves and third persons.
  46. Separate execution against joint property, subject to the joint account.
  47. Creditor may, not bound to, resort to dormant partner.
  48. Cannot claim in competition with joint creditors.
  49. Creditors have no general lien.
  50. By agreement for profits.
  51. By lending name; though to bear no loss.
  52. Accounts refused before answer.
  53. By share in profits.
  54. Dormant: option of creditor without notice.
  55. } Dormant: plea in abatement.
  56. }
  57. By share in profits.
  58. Dormant: option of creditor.
  59. Dormant: plea.
  60. By use of name.
  61. Mortgage to partners, their heirs and assigns, to secure debts to them or the survivor: whether available, if another added; in whose time the debt accrued.
  62. Dormant distinguished from nominal. Not by salary, not charged on profits.
  63. Action by one for a debt to him and another; and the difficulties upon that.
- 
1. Judgment against one of two partners: execution to be only of a moiety: but in equity upon the failure of one the partnership fund is to be distributed among the joint creditors. - - - - -
  2. If joint-tenants of leasehold or freehold estate lay out money jointly upon it in the way of trade, there is no survivorship. - - - - -
  3. An advantage, to be taken by a partner out of the trade, may be measured in any way agreed on; and will not be usurious. - - - - -
  4. Bill by partner under a parol agreement, charging misconduct in the other partner, and praying a dissolution, account, and injunction from executing securities in the name of the firm: demurrer to the prayer for a disso-

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|     | lution, because there was no writing between them, over-ruled. <i>Master v. Kirton.</i>  | Vol.<br>III |
| 5.  | Bankers upon a deposit of money with them gave notes bearing interest: the partnership was dissolved: one of the partners soon afterwards died; and his creditors were called by advertisement: another partnership was formed by the survivors and others; who re-issued notes of the former partnership; and paid the interest of the deposit-notes for near two years, when they failed: the assets of the deceased partner are not discharged. <i>Daniel v. Cross.</i> | III.        |
| 6.  | Partners bound by an instrument executed by one in the presence of the others. (See No. 34.)   | III.        |
| 7.  | Though one of three partners is an infant, an action must be brought against all three.  | IV.         |
| 8.  | A separate creditor of a partner has no right against the joint property farther than the separate interest of that partner; viz. his share upon a division of the surplus, subject to the accounts of the partnership: therefore joint property of an insolvent partnership, taken in execution for a separate debt, cannot be held against the joint creditors. <i>Taylor v. Fields.</i>   | IV.         |
| 9.  | Assignee, executor, or separate creditor, coming in the right of one partner against the joint property, comes into nothing more than an interest, subject to an account between the partnership and the partner, and therefore to the joint debts: assignee under a separate commission of bankruptcy has only the same right to stand in the place of the bankrupt by the common law, not under the bankrupt laws.   | IV.         |
| 10. | The good-will of a trade, carried on in partnership without articles, survives; and is not partnership stock (a). <i>Hammond v. Douglas.</i>   | V.          |
| 11. | Profits, accrued after the death of one partner, are joint property. <i>Hammond v. Douglas.</i>  | V.          |
| 12. | Whether, and under what circumstances, a trader can plead in abatement a partner abroad, <i>quære.</i>   | VI.         |
| 13. | To make a partnership liable to a demand in respect of a separate transaction, an agreement must appear. (See No. 19.) <i>Ex parte Steele.</i>   | VI.         |
| 14. | Ships, purchased by one partner, held separate property, as between the creditors, after his bankruptcy, and the death of the other, upon the circumstances; particularly the registry being made in the name of the one partner only; and being afterwards continued for a purpose, that would have prevented any claim of the other, viz. a fraud upon an Act of Parliament. <i>Curtis v. Perry.</i>   | VI.         |
| 15. | Partnership of three manufacturers in <i>Lancashire</i> sold their goods in <i>London</i> in the names of two only: upon   |             |

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(a) See the note, Vol. V. page 540.

their bankruptcy as among their creditors the property was held to be, where the order and disposition was at the time of the bankruptcy, according to the statute 21 James 1. c. 19. s. 11. - - - - -	VI. 747
Demurrer to a bill by some members of a lodge of Freemasons against others to have the dresses, and decorations, books, papers, and other effects, of the Society delivered up, and an injunction, was allowed on the ground, that they affected to sue in a corporate character: but leave was given to amend: the Court holding jurisdiction for the delivery of a chattel; and, where there is a joint interest, permitting some to sue as individuals, representing the rest, in other instances than those of creditors and legatees: if inconvenient to justice that all should be parties. <i>Lloyd v. Loaring.</i> -	VI. 773
Various modes of dissolution of partnership; and the consequences. - - - - -	VI. 126
Injunction to restrain a surviving partner from disposing of the joint stock, and receiving the outstanding debts. <i>Hartz v. Schrader.</i> - - - - -	VIII. 317
Power of a partner to bind the partnership; unless from the nature of the transaction it can be inferred to be separate; in which case previous authority or subsequent approbation must be shewn. Under the circumstances, proof in bankruptcy undisputed since 1793, and no one to explain the transaction but one partner, inquiry refused. (See No. 13.) <i>Ex parte Bonbonus.</i>	VIII. 540
No specific execution of an agreement for a partnership; as it might be dissolved immediately afterwards. <i>Hercy v. Birch.</i> - - - - -	IX. 357
Purchase by partners of real estate to them and their respective heirs, equally, as tenants in common, &c. to be used in trade during the partnership; with covenants against alienation and partition. The nature of the property is not varied. <i>Balmain v. Shore.</i> - -	IX. 500
A partner, retired upon a bond for the balance due to him, and a covenant of indemnity, with a surety, being upon the bankruptcy of the remaining partners arrested by the joint creditors, his petition for the application of the specific stock and debts of the old partnership to the creditors of that partnership in preference was dismissed; with liberty to file a bill. <i>Ex parte Fell.</i> -	X. 347
Upon a dissolution of partnership by the retirement of a partner, followed by bankruptcy, the right of the joint-creditors against joint property, remaining in specie, depends upon the <i>bonâ fides</i> . The transaction in this instance having that character, the petition of joint creditors was dismissed. <i>Ex parte Williams.</i> -	XI. 3
Equity among partners, and the consequences upon a dissolution, with reference to each other and creditors.	XI. 5

25. Execution under a judgment by a separate creditor as to a moiety: whether in equity subject to the partnership account, *quære*. - - - - - XI. 85
26. Bill by assignees of a bankrupt, claiming a debt, which had been paid to his partner, as paid after notice of dissolution of the partnership, that partner retiring, and the bankrupt continuing, dismissed: the terms of the alleged arrangement not being made out; so as to establish the right in equity of the bankrupt against the legal right of the other partner. The other questions therefore were not determined: 1st, Whether a demand, the result of an over-payment in advance upon a single transaction of sale between merchants, or merchant and factor, was within the exception as to merchants' accounts in the Statute of Limitations: 2dly, As to the effect of that exception; whether including merchants' accounts generally; or those only with items continuing within the six years (a): 3dly, Upon the objection of laches, independent of the statute. *Duff v. The East India Company*. - - - - - XV. 198
27. Payment to one partner a good discharge. - - - - - XV. 213
28. One partner cannot sue separately. - - - - - XV. 213
29. A partnership being dissolved by the bankruptcy of one partner, the assignees are entitled, beyond an account and distribution of the stock, &c. to a participation of subsequent profits, made by the other partners, carrying on the trade with the capital, as constituted at the time of the bankruptcy. As far as the profits may have been produced by a joint application of that and other funds, *quære*. *Crawshay v. Collins*. - - - - - XV. 218
30. Implied obligations among partners, as far as they are not regulated by express contract; for instance, to use the joint property for the benefit of all the owners. - - - - - XV. 226
31. Partnership may, after the determination of it by the contract of the partners, continue for the purpose of winding up engagements with third persons. - - - - - XV. 226
32. Partnership determined by death: the legal property survives: not the beneficial interest. Right of the executor to the value of the testator's interest, to be ascertained, not by calculation, but by sale. - - - - - XV. 227
33. Whether upon the death of a partner the good-will survives, *quære* (b). - - - - - XV. 227
34. Partnership bound by the signature of one partner. (See No. 6.) *Ex parte Gardom*. - - - - - XV. 226
35. Assignment by one partner of joint property to secure his separate debt must be subject to the joint debts. *Young v. Keighly*. - - - - - XV. 557
36. Right upon the bankruptcy of a partner to an account, not to the proportion of specific articles. - - - - - XV. 229

(a) So decided since. See the note, Vol. XV. page 205.

(b) See the note, Vol. V. page 540.

## PARTNER.

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Partnership without any provision as to its duration may be determined without previous notice; subject to the accounts to wind up the concern. (See No. 41.) <i>Peacock v. Peacock.</i> - - - - -	XVI. 49
Partnership, without any stipulation as to the proportions: the partners entitled in equal moieties. <i>Peacock v. Peacock.</i> - - - - -	XVI. 49
Affidavits admitted on motion, after Answer, for an Injunction and Receiver in the case of partnership, by analogy to waste. <i>Peacock v. Peacock.</i> - - - - -	XVI. 49
Equitable right of partners, subject to the joint debts: depending upon the result of the account between them. Therefore under a joint Commission of Bankruptcy the separate estate of one has a lien upon the other's share of a surplus of the joint estate in respect of a debt, proved under bills, drawn in the name of the firm for a separate debt; and may come in with the other separate creditors for the deficiency. <i>Ex parte King.</i> -	XVII. 115
A partnership, without articles, and for an indefinite period, may be dissolved by any partner, at any time, without previous notice; subject to the engagements of the partnership: but the existence of engagements with third persons cannot prevent the right of dissolution as among themselves. (See No. 37.) <i>Featherstonhaugh v. Fenwick.</i> - - - - -	XVII. 298
The consequence of the dissolution of partnership, where there are no articles, prescribing the terms, is a general sale and account of the joint property: one or more partners therefore cannot insist on taking the share of another at a valuation; or, that he shall remove his proportion from the premises; thereby securing the good-will. <i>Featherstonhaugh v. Fenwick.</i> - - -	XVII. 298
Partner, after dissolution of the partnership continuing to trade with the joint property, must account for the profits. <i>Featherstonhaugh v. Fenwick.</i> - - - - -	XVII. 298
Lease of premises, where a partnership trade was carried on, renewed by one partner in his own name clandestinely, a trust for the partnership; to be accounted for as joint property. <i>Featherstonhaugh v. Fenwick.</i> -	XVII. 298
Distinction as to partners, with reference to third persons, and as between the partners themselves. Partner as to third persons by a specific interest in the profits, as such: not by receiving a sum of money even in proportion to a given share of the profits. <i>Ex parte Hamper.</i> - - - - -	XVII. 403
Execution by a separate creditor against joint property, subject to account; ascertaining the specific interest of the partner in the joint effects. - - - - -	XVII. 407
Dormant partner, not an ostensible contracting party: a creditor may, but is not bound to, go against him. -	XVII. 412

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48. A partner cannot claim in competition with the joint creditors. - - - - -	XVII.	521
49. Creditors, as such independent of special contract, have no lien or charge on the effects; but in the distribution of joint estate obtain payment through the equities of the partners among themselves. - - - - -	XVII.	526
50. Partnership by agreement for a participation in profits or their application. <i>Ex parte Langdale.</i> - - - - -	XVIII.	300
51. Partner without participation of profit by lending his name; though contracting, that he shall suffer no loss. - - - - -	XVIII.	301
52. Motion by defendants to a bill for a partnership account for a production of the accounts before answer, refused. <i>Pickering v. Rigby.</i> - - - - -	XVIII.	484
53. Partner by a share in profits without interest in capital. <i>Ex parte Hodgkinson.</i> - - - - -	XIX.	291
54. Option of creditor without notice of a dormant partner to consider himself a joint or separate creditor. - - - - -	XIX.	294
55. Plea in abatement, that there is a dormant partner. - - - - -	XIX.	294
56. Dormant partner. <i>Ex parte Norfolk.</i> - - - - -	XIX.	455
57. Partner by a share in the profits, without interest in the capital. - - - - -	XIX.	457
58. Election of a creditor to resort to a dormant partner as a joint creditor, or not. - - - - -	XIX.	458
59. As to late decisions at law in favour of a plea of dormant partner, <i>quære.</i> - - - - -	XIX.	458
60. Partner by the use of his name, without interest in the profits. <i>Ex parte Watson.</i> - - - - -	XIX.	459
61. Mortgage to partners, their heirs and assigns, to secure debts due, or to become due to them or the survivor, whether available to a new partnership, formed by the addition of another, in whose time the debt accrued, <i>quære. Ex parte Watson.</i> - - - - -	XIX.	459
62. Distinction between a dormant, and nominal, partner. The former liable in respect of profits: but one receiving a salary, not charged on profits, is not by that a partner. - - - - -	XIX.	461
63. As to an action by one for a debt, contracted with him and another, the difficulty of set-off, and proof whether or not a partner, and the plea of dormant partner, where not to the plaintiff's injury, and with reference to the case of principal and surety, <i>quære.</i> - - - - -	XIX.	461

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## PARTNERSHIP IN UNDER-WRITING, ILLEGAL.

See *Account* 7.



**PART-PERFORMANCE.**

*See Contract 34. 50. 51. 90. 91. 109. 110. 111. (Specific Performance 59.) Frauds, Statute of, 3. 6.*

**PARTY.**

1. In supplemental, though not in the original, suit.
  2. Vendor's Stewards and Receivers not to be parties to a Bill for specific performance against him.
  3. Defendant liable to another suit.
  4. First tenant in tail sufficient.
  5. Assignee without mortgagor's privity alone necessary.
  6. The general rule dispensed with from inconvenience.
  7. Need not be named, if sufficiently described.
  8. The general rule dispensed with from extreme difficulty.
  9. Rights of all interested to be determined, as far as possible.
  10. As to requiring all incumbrancers.
  11. Witness not to be.
  12. Executor not to be party to foreclosure by mortgagee of a term from tenant in fee.
  13. Account under Bill by one of the officers, &c. of a privateer on behalf of himself and all the others.
  14. Not a ground of nonsuit or defence on contracts, as a committee of a legal society.
  15. Demurrer by individual members of a corporation charged with improper motives; and *ore tenus* that it would be the subject of a criminal prosecution, over-ruled.
  16. Witness not to be, generally: Exceptions.
  17. Against whom no relief prayed, only the agent of a corporation.
  18. Demurrer; if costs are not prayed against agent for fraud.
  19. Rule, requiring all interested, dispensed with.
  20. The subject of demurrer or plea.
  21. Distinction by analogy to the rule at law on plea in abatement.
  22. Where the first having an estate of inheritance sufficient.
  23. All in joint and several bond generally: Exception, a surety insolvent: or having paid nothing.
  24. Generally all interested in the residue: Exception, when not necessary or convenient.
  25. Where dispensed with.
  26. Not enabling plaintiff to put off the cause without consent or a special ground.
  27. Dispensed with for convenience admitted afterwards, to support their interests.
  28. Bill by bankrupt for an account without the assignee.
  29. The number not to prevent enforcing a legal right.
- Devise to trustees and their heirs to the use of other trustees for one thousand years: upon trust by sale, lease, mortgage, or otherwise, to raise and pay such sum as the personal estate should fall short of the debts;



## PARTY.

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and after raising and paying thereof then in strict settlement. A bill being filed by creditors, the personal estate proving deficient, and the trustees of the inheritance having contracted to sell under a power, upon their supplemental bill, praying the benefit of the accounts against the surviving trustee of the term, though no party to the original cause, that the debts may be paid out of the purchase-money, and that on payment the term may be assigned to the purchasers, it was so decreed; the defendants not objecting. *Fletcher v. Houghton.* - - - - -

V. 550

2. To a bill against a vendor for a specific performance his stewards and receivers ought not to be made parties. A specific performance being decreed, the bill as against them was dismissed with costs. *M'Namara v. Williams.*

VI. 143

3. Defect of parties: Defendant being liable to another suit. - - - - -

VII. 11

4. Rule, established for convenience, that it is sufficient to bring the first tenant in tail before the Court. - - -

IX. 55

5. Assignment without the authority or privity of the mortgagor: the assignee is the only necessary party. -

IX. 269

6. Upon a bill for equitable relief as to a rent-charge all the persons, whose estates are liable, must be parties. The rule dispensed with under circumstances, making it impracticable or highly inconvenient. - - -

XI. 367

7. Upon an objection for want of parties not necessary to point them out by name; if described so as to enable the plaintiff to make them parties. - - -

XI. 369

8. The general rule, requiring all persons interested to be parties, dispensed with, where it is impracticable, or, extremely difficult. In such a case, to obtain a decree, to establish the right of suit to a mill, for instance, the Court only requires parties sufficient to secure a fair contest; and, the right being established in that way, consequential relief may be had against the rest in another suit. *Adair v. The New River Company.* -

XI. 429

9. As far as possible the Court endeavours to make a complete decree, embracing the whole subject, and determining the rights of all parties interested in the estate. - - -

XII. 58

10. As to the necessity of making all incumbrancers parties, *quære.* - - -

XII. 58

11. A witness not to be a party. - - -

XII. 343

12. Mortgage by tenant in fee by creating a term. The personal representative ought not to be a party to a bill of foreclosure. *Bradshaw v. Outram.* - - -

XIII. 234

13. Bill by one of the officers and crew of a privateer against the owners for an account of captures, according to the articles. Leave given to amend, by stating, that the bill was on behalf of the plaintiff and all others; and upon that amendment the account was decreed. *Good v. Blewitt.* - - -

XIII. 397

## PARTY.

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Persons contracting on behalf of a legal society, of which they are members, as a committee, are not liable to nonsuit, and cannot defend an action, upon an objection of parties. • <i>Cousins v. Smith.</i> - - - - -	XIII. 542
Bill against a corporation, trustees for a charity, for a discovery, and Injunction against a resolution, depriving the plaintiff of his office of school-master; charged to have been procured by five of the members, including the bailiff, from improper motives, with reference to a parliamentary election. Demurrer by those five, on the ground, that no title was shewn to discovery against them, and, <i>ore tenus</i> , that the charge would be the subject of a criminal prosecution, over-ruled. <i>Dummer v. The Corporation of Chippenham.</i> - - - - -	XIV. 245
General rule, that a mere witness is not to be made a party. Exceptions in the cases of arbitrators and attorneys; and corporations; whose officers and servants are made parties. - - - - -	XIV. 252
The only case, in which a person, against whom no relief is prayed, is allowed to be made a party, is that of the agent of a corporation. - - - - -	XV. 164
Where an agent is so involved in a fraud, that the Court will charge him with costs, though relief cannot be prayed against him, yet, if the costs are not prayed against him, a demurrer lies. - - - - -	XV. 164
The strict rule, that all persons, materially interested, must be parties, dispensed with, where it is impracticable, or very inconvenient; as in the case of a very numerous association in a joint concern; in effect a partnership. <i>Cockburn v. Thompson.</i> - - - - -	XVI. 321
Defect of parties the subject of Demurrer, or Plea; as it appears, or not, on the face of the bill. <i>Cockburn v. Thompson.</i> - - - - -	XVI. 321
Distinction between partners and creditors, and between general and scheduled creditors, by analogy to the rule at law, that a plea in abatement must shew the proper party. - - - - -	XVI. 325
Where it has been held sufficient to bring before the Court the first person, having an estate of inheritance. All obligors in a joint and several bond, principal and sureties, must be parties, generally. Exception, where the surety is insolvent; or has paid nothing. - - - - -	XVI. 326
Generally, a residuary legatee must bring before the Court all persons, interested in the residue. Exception, where not necessary or convenient. - - - - -	XVI. 328
Various cases, where parties dispensed with: Bills by or against some tenants of a manor; as for suit to a mill, &c.: some parishioners for tithes, or a <i>modus</i> : societies for insuring each other; which is not within the statute 6 Geo. 1. c. 18. - - - - -	XVI. 328
Plaintiff cannot put off the cause for defect of parties,	

without consent, or a special ground; as, that he was not aware of the existence of such parties. *Innes v. Jackson.* - - - - -

XVI. 356

27. Parties, dispensed with for convenience in the first instance, coming in after institution of the suit, must have the opportunity of supporting their interests, re-hearing, &c. a creditor, for instance; and, if partner with the debtor, subject to account. - - - - -

XVI. 327

28. Bill by a bankrupt, and the assignee under an Insolvent Act, of which he afterwards took the benefit, against representatives of the deceased assignees, and others, for an account of his estate and various transactions before and since the bankruptcy; no assignee in the bankruptcy being a party; and collusion with persons accountable to the estate charged against only some of the representatives of the assignees. Demurrer allowed, generally for want of equity, and as relief might be had by petition in bankruptcy; and *ore tenus*, the suit being multifarious; as uniting parties, though in some respect connected, having distinct interests. *Saxton v. Davies.* - - - - -

XVIII. 72

29. Difficulty from the number of parties not to prevent the Court's acting to enforce a legal right. - - - - -

XIX. 305

See *Annuity* 1. *Bank of England* 3. 4. *Bankrupt* (*Abatement* 1. 3. 4.) *Baron and Feme* 290. *Charity* 35. *Demurrer* 6. *Injunction* 13. *Mortgage* 34. *Partner* 14. *Pleading* 29. 39. (*Demurrer* 19.) *Practice.* *Tithe* 13. *Title* 1.

### PASTURE, COMMON OF.

See *Injunction* 14.

### PATENT.

1. For *Italian Operas* refused. A proper case required: not merely answers to objections: the Court takes care, that the King is not deceived, but does not decide between the claimants.
  2. Not signed, unless some control provided; though no *Caveat*.
  3. Public accommodation the object; as upon the complaint of an old market against a new one near it.
  4. Even in fee, abused, would not stand.
  5. Must be under proper restraints.
  6. Whether the subject of a trust.
  7. Enrolment not dispensed with, to prevent publication.
  8. Time for enrolment not enlarged.
  9. Great Seals of *England* and *Ireland* since the Union distinct for this among other purposes.
  10. Injunction on possession until trial; though subject to considerable doubt.
  11. For improvements.
1. The Court refused to seal a Patent for representing *Italian Operas*; because the provisions for carrying it

## PATENT.—PAUPER.

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on were by agreement with the *Lord Chamberlain*, his executors and administrators; and the right to the Patent was not sufficiently connected with the property in the house. Not sufficient for the party applying merely to answer objections: but he must lay a proper case. Upon such application the Court will take care, that the King is not deceived, nor his object disappointed: and will represent the whole to the King; but will not decide upon the merits of the various claimants.

*Ex parte O'Reilly.* - - - - - I. 112

Court will not sign a Patent, which does not put the parties under some control; though there is no *Caveat*. J. 113

Essential to the complaint of an old market against a new one set up near it, that the old is competent to the accommodation of the public; so as to a theatre, the old proprietors must be able to keep it up properly; the accommodation of the public being the principal thing. I. 114

Patent even in fee could not stand, if abused. I. 118

A Patent must be taken under proper restraints. I. 128

*Quære*, whether a Patent can be the subject of a trust. I. 129

Enrolment of a Patent cannot be dispensed with for the purpose of preventing the specification being made public. *Ex parte Koops.* - - - - - VI. 599

After a Patent has passed, the time for enrolment cannot be enlarged without an Act of Parliament. *Ex parte Koops.* - - - - - VI. 599

Since the Union of *Great Britain* and *Ireland* the Great Seals are distinct for Patents among other purposes. VI. 708

Injunction upon possession under a Patent, until the right can be tried; though subject to considerable doubt: the Patent being for improvements upon a machine, the subject of a former Patent, expired; and the specification describing the original machine, with the improvements, as one entire machine, the subject of the latter Patent; not distinguishing the improvements. *Harmer v. Plane.* - - - - - XIV. 130

Patent for improvements valid: but not to restrain the use of the original machine. - - - - - XIV. 133

See *Copyright* 5. *Injunction* 2. 11. *Practice* 46. 77.

## PATENT AMBIGUITY.

See *Evidence* (*Parol* 7.)

## PATERSON'S ROAD BOOK.

See *Copyright* 2.

## PATRON.

See *Advowson* 1. *Pleading* (*Demurrer* 21.) *Trust* 64.

## PAUPER.

1. Committed for an improper bill.
2. Affidavit, excepting the matters in question, not sufficient.

- 3. The privilege not to be perverted to injustice; though the Court is tender as to dispaupering.
- 4. }
- 5. } Costs to, or against.
- 6. }
- 7. }
- 8. Dispaupering.
- 9. Practice at law.
- 10. Not proceeding to trial after notice.
- 11. Whether proceedings stayed until payment of costs of a nonsuit in a former action for the same cause.
- 12. Notice of motion must be signed by the Clerk in Court.
- 1. A pauper is liable to be committed for filing an improper bill. - - - - -
- 2. Affidavit, that the defendant is not worth more than £5, except the matters in question, will not entitle him to defend *in formâ pauperis*. On that ground he was dispaupered. *Spencer v. Bryant*. - - - - -
- 3. The privilege of paupers for obtaining justice not to be perverted to injustice. The Court tender as to dispaupering. Costs against a pauper upon that ground not pressed, on the recommendation of the Court. *Whitelocke v. Baker*. - - - - -
- 4. Costs to a pauper. Whether more than out of pocket, *quære*. *Frost v. Preston*. - - - - -
- 5. Plaintiff a pauper. Costs of impertinence, expunged from the answer, ordered to be taxed as *Dives* costs, to be paid into Court. *Rattray v. George*. - - - - -
- 6. Different decisions as to costs to a pauper. - - - - -
- 7. Costs against a pauper for scandal. - - - - -
- 8. Improper and vexatious conduct in a former suit, or a subscription, though liable to be impeached as maintenance, no ground for dispaupering. *Corbett v. Corbett*. - - - - -
- 9. Practice at law as to suing *in formâ pauperis*. - - - - -
- 10. Pauper, not proceeding to trial after giving notice, dispaupered; or not permitted to proceed. - - - - -
- 11. Whether proceedings would be stayed in an action by a pauper until payment of costs of a nonsuit in a former action for the same cause, as a pauper or not, *quære*. - - - - -
- 12. Notice of motion by a party *in formâ pauperis* must be signed by the Clerk in Court. *Gardiner v. —*. - - - - -

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See Bankrupt (Privilege 1.) Parent and Child 1.

PAWNER AND PAWNEE.  
See Discovery 3.

PAYMENT.  
See Bill of Exchange 14.

PAYMENT INTO COURT.

- 1. Of money raised under Sequestration; though contempt cleared.

## PAYMENT INTO COURT.—PENSION.

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2. Discharges *Ne exeat Regno*.
  3. Ordered of trust-fund in danger.
  1. Estate ordered to be sold for debts: money raised under Sequestration paid into Court, though contempt cleared. — *v. Bennet*. - - - - - I. 89
  2. Writ of *Ne exeat Regno* discharged on paying into Court the sum, for which it was marked. *Evans v. Evans*. - I. 96
  3. Trust-fund, which under a power in a marriage settlement had been lent, decreed to be paid into Court; the trustees representing it to be in danger. *Payne v. Collier*. I. 170
- See *Practice* 8. 175. 194. 195. 213. 370.

## PECUNIARY LEGACY.

See *Executor* 75. 76. *Legacy*.

## PEDIGREE.

See *Evidence*.

## PEER.

1. Privileges of *Irish Peers* since the Union. Entitled to Letter-missive.
  2. Peeress, answering on honour.
  1. Since the Union with *Ireland Irish Peers*, with the exception of those, who are members of the House of Commons, are entitled to every privilege, except sitting in the House of Lords, and therefore to the Letter-missive. *Robinson v. Lord Rokeby*. - - - - - VIII. 601
  2. Peeress, answering upon honour, in exactly the same situation as another defendant answering on oath. *Gilpin v. Lady Southampton*. - - - - - XVIII. 469
- See *Answer* 21. *Domicil* 5. *Maintenance (Of Suits 1.) Practice* 200. *Privilege* 1.

## PEERS, HOUSE OF.

See *Copyright* 10.

## PENALTY.

1. Limiting damages for successive breaches under the Statute 8 & 9 Wm. 3.
  1. The Statute 8 & 9 Wm. 3, remedial for the purpose of recovering successive breaches to the extent of the penalty. - - - - - V. 331
- See *Annuity* 9. 10. *Bond* 7. *Contract* 47. *East India Company* 2. *Evidence (Witness 23.) Good-will* 2. *Pleading* 47. (*Demurrer* 19.) *Principal and Surety* 11. 22.

## PENSION TO OFFICERS' WIDOW.

1. Requires marriage before retirement from service.
1. To entitle the widow of an officer in the army to the pension from Government, the marriage must have taken place, before he retired from the service. - - - - - III. 204

## PER CAPITA.

See *Issue* 6.

## PERFORMANCE.

See *Contract. Satisfaction.*

## PERFORMANCE, SPECIFIC.

See *Contract. Purchase* 15.

## PERJURY.

1. } Falsehood and materiality required; and two witnesses.
2. }

1. To convict for perjury, what is sworn must be both false and material. - - - - -

VIII. 38

2. Distinction of perjury; requiring two witnesses. - - -

XIII. 134

See *Evidence (Witness 20.) Injunction* 20.

## PERPETUAL RENEWAL.

See *Landlord and Tenant* 47. *Lease (Renewal.)*

## PERPETUATING TESTIMONY.

See *Bill to perpetuate Testimony. Evidence* 65. 66.

## PERPETUITY.

1. Interest after tenancy for life of unborn child must be absolute.
2. Intail of personal property.
3. } Number of lives by executory devise unlimited.
4. }
5. By the law of *Scotland*.
6. Limitation of personal property after general failure of issue.
7. Trust inconsistent with estate-tail.
8. Intail of personal property.
9. Limitation of personal property beyond twenty-one years after a life.
10. } Distinction as to personal property between death
11. } "without issue" and "without leaving issue" En-
12. } larging an express estate for life by implication.
13. } A number of lives within the legal limits.
14. }
15. Absolute property in leasehold intailed; and a power inconsistent void.
16. Personal property bequeathed with settled estate, as far as law and equity will permit.
17. Failure of issue limited to twenty-one by implication. Vesting.
18. }
19. }
20. }
21. } Limitation of personal property after indefinite failure
22. } of issue void. Leaning against that construction
23. } limited.
24. }
25. }
26. }
27. }



## PERPETUITY.

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An unborn child of a person <i>in esse</i> may be made tenant for life, if beyond that the absolute interest is disposed of. <i>Routledge v. Dorrill.</i> - - - - -	II. 357
A limitation of personal property after a disposition, that would raise an intail express or implied in real estate, is void; and the person, who would be tenant in tail, takes the absolute interest. <i>Chandless v. Price.</i> - - -	III. 99
No limited number of lives for the purpose of postponing the vesting of an executory devise. - - -	IV. 313
Limitation of a term or the trust of a term for twenty lives in being successively is good. - - - - -	IV. 332
By the law of <i>Scotland</i> land may be made unalienable for ever under certain regulations. - - - - -	IV. 339
Residue of personal estate bequeathed to the children of the testator's two daughters, their executors, &c. with a limitation over, in case both his daughters should die without issue: a vested interest in the grand-children; and the limitation over is too remote. <i>Rawlins v. Goldfrap.</i> - - - - -	V. 440
Trust by deed, creating estates tail, after any contract for alienation to raise a sum of money for the persons next in the course of limitation, declared void; as tending to a perpetuity, and inconsistent with the rights of the tenant in tail. <i>Mainwaring v. Baxter.</i> - - -	V. 458
A limitation, which would create an estate tail as to freehold property, would give the absolute interest in personal estate. - - - - -	VI. 159
Bequest of personal property to <i>A.</i> for life; and after her decease to her children, when at the age of twenty-seven respectively; and in the event of her not leaving any child or children, or of the death of all under the age of twenty-seven, over. The limitation over too remote. - - - - -	VIII. 24
Devise and bequest to <i>A.</i> and the heirs of his body, with a limitation over, if he had no such heirs. An estate tail in the real estate: an absolute interest in the personal; the limitation over being void. But thus expressed, "if he leaves no such heirs," it would be good; as confined to the time of the death, and not after an indefinite failure of issue; according to the distinction in <i>Forth v. Chapman.</i> <i>Crooke v. De Vandes.</i> - - -	IX. 197
Devise and bequest, in trust to pay the income to <i>A.</i> for his use during his life, with remainder in default of issue to <i>B.</i> for his use during his life; remainder in default of issue to <i>C.</i> for life in the same manner; remainder over. The remainder after the limitation to <i>A.</i> for life, void, as too remote; and <i>A.</i> being heir at law and residuary legatee, his title to the real and personal estate was established. Whether the express estate for life would be enlarged by implication, <i>quære.</i> <i>Boehm v. Clark.</i> - - - - -	IX. 580

- 12.** Devise of real estates of the annual value of near £5000, and other estates, directed to be purchased with the residue of the personal estate, amounting to above £600,000, to trustees, and their heirs, &c. upon trust during the lives of the testator's sons *A. B.* and *C.* and of his grandson *D.* and of such other sons as *A.* now has or may have, and of such issue as *D.* may have, and of such issue as any other sons of *A.* may have, and of such sons as *B.* and *C.* may have, and of such issue as such sons may have, as should be living at his decease or born in due time afterwards, and during the life of the survivor to receive the rents and profits, and from time to time to invest the same, and the produce of timber, &c. in other purchases of real estates; and after the death of the survivor of the said several persons, that the said estates shall be divided into three lots; and, that one lot shall be conveyed to the eldest male lineal descendant then living of *A.* in tail male; remainder to the second, &c. and all and every other male lineal descendant or descendants then living, who shall be incapable of taking as heir in tail male of any of the persons, to whom a prior estate is limited, of *A.* successively in tail male; remainder in equal moieties to the eldest and every other male lineal descendant or descendants then living of *B.* and *C.* as tenants in common in tail male in the same manner, with cross-remainders; or, if but one such male lineal descendant, to him in tail male; remainder to trustees, their heirs, &c. The other two lots were directed to be conveyed to the male descendants of *B.* and *C.* respectively in the same manner, and with similar limitations to the male descendants of their brothers, and to the trustees in fee; and it was directed, that the trustees should stand seised upon the failure of male lineal descendants of *A., B.* and *C.* as aforesaid, upon trust to sell, and pay the produce to his Majesty, his heirs, and successors, to the use of the sinking fund: the accumulation till the purchases or sales can take place, to go to the same purpose; with a direction, that all the persons becoming entitled shall use the surname of the testator only. The decree, establishing the trusts of the Will, was affirmed by the House of Lords upon appeal. *Thellusson v. Woodford.* - - - - - IV. 227. XI. 11
- 13.** Testator may give a life-estate, to be appointed by the survivor of one thousand persons. - - - - - XI. 14
- 14.** Property may be so limited as to make it unalienable during any number of lives, not exceeding that, to which testimony can be applied, to determine when the survivor drops. - - - - - XI. 14
- 15.** Leasehold estates bequeathed, in trust to pay the rents and profits to the persons for the time being entitled

under the limitations of real estate, devised in strict settlement; with power to the trustees at any time with the consent of the persons so entitled, or, if minors, at their own discretion, to sell, and invest the produce in real estate to the same uses. The leasehold estates vest absolutely in the tenant in tail upon his birth; and the power is void. <i>Ware v. Polhill.</i> -	XI. 257
As to the effect of a direction by Will, that personal property shall go with a settled estate, as far as the rules of law and equity will permit, <i>quære.</i> - - - -	XI. 280
Bequest to the testator's two natural sons; with survivorship upon the death of either before twenty-one, and without issue; but, in the event of both dying without issue, over: the interest beyond maintenance to be added yearly to the principal, for their benefit: to be paid when they attain twenty-one. The limitation over upon the death of both established. As to the accumulation a vested interest; and the payment only postponed. <i>Kirkpatrick v. Kirkpatrick.</i> - - - -	XIII. 476
Limitation of personal property upon an indefinite failure of issue void, as too remote. - - - - -	XIII. 483
Limitation of personal property after an indefinite failure of issue void, as too remote: otherwise, if confined to the time of the death. Courts endeavour to support such limitation; taking advantage of any expression to construe the event never having had issue, or to confine it to the death. - - - - -	XIII. 484
Limitation of personal property, if <i>A.</i> should die without issue male, <i>B.</i> (if living), if not, <i>C.</i> and <i>D.</i> in succession of age, to enjoy, &c. not too remote. <i>Southey v. Lord Somerville.</i> - - - - -	XIII. 486
Testatrix gave all her estate real and personal to her daughter and her heirs, and half the Navigation-money for her natural life; and in case she dies without issue all to be divided between four nephews and nieces, named: the part of one only for life, and to be divided between the survivors. The limitation over too remote; there being no expression or circumstance to limit the generality of the words to a failure of issue at the time of the death. As to what property it extends to, <i>quære.</i> <i>Barlow v. Salter.</i> - - - - -	XVII. 479
The words "die without issue" have their legal signification: viz. a general failure; unless there are expressions, or circumstances, from which it can be collected, that they are used in a more confined sense. -	XVII. 482
Though, where nothing but a life-interest is given over upon a failure of issue, it must necessarily be intended a failure within the compass of that life, where the entire interest is given over, the mere circumstance, that one taker is confined to a life interest, furnishes no indication of an intention to make the whole be-	
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quest depend on the existence of that person, when the event happens, on which the limitation over is to take effect. - - - - -

XVII.

24. Devise for life, and, in default of issue, to another for life; and, in default of his issue, remainder over: the limitation over void as to the personal property: either as too remote; or as an estate tail by implication. -

XVII.

25. Devise to devisor's wife of all his real and personal estates for her life, "and after her" to A. and his male issue: "for want of male issue after him" to B. and his male issue: "for his want of male issue" to two others and their male issue. An absolute interest in A. as to the personal estate. *Donn v. Penny.* - -

XIX.

26. Bequest of personal property to a man and his issue an absolute interest; but a limitation over for want of issue living at his death is good. - - - -

XIX.

27. The sense of the words "die without issue," or "for want of issue," not to be departed from without satisfactory evidence, that they were not intended in that sense.

XIX.

See *Estate* (Tail 6. 7. 8.) *Executory Devise.* *Mortmain* 3. *Power* (Appointment 10.) *Trust* (Executory 1.) *Will* 18. 118. 126. (*Executory Devise.*)

PERSONA DESIGNATA.

See *Heir* 14.

PERSONAL CHATTEL.

See *Chattel.* *Estate* (Real 1.)

PERSONAL ESTATE.

1. Every specific article cannot be the subject of settlement.

1. Personal estate is so fluctuating in its nature, that it is impossible to make every specific article the subject of settlement. - - - - -

V. 2

See *Assets* 30. *Construction* 5. 6. *Devise* 4. *Domicil.* *Exoneration* 10. *Money.* *Perpetuity* 6. *Power* (Appointment 30.) *Will* 186.

PERSONAL REPRESENTATIVE.

See *Executor.* *Representative.*

PETITION.

See *Heir* 1. *Laches* 21. *Practice* 22. 166. 301. 303. 353. *Re-hearing* 5.

PETITION UPON ELECTION TO PARLIAMENT.

1. Petitioner not discharged from the expense by the engagement of another.

1. Party, presenting and attending a petition to the House of Commons, cannot by setting up the engagement of

## PETITION, &c.—PLEADING.

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another person deliver himself from the expense of his own suit. - - - - -

III. 500

See *Maintenance (Of Suits 1.)*

### PETTY BAG.

See *Jurisdiction 40.*

### PHYSICIAN.

See *Evidence (Pedigree 7.)*

### PIRACY.

See *Copyright. Practice 109.*

## PLEADING.

1. Heir, claiming title-deeds against executors, not required to state every link of his pedigree.
2. Averments in plea of fine.
3. Answer as trustee for mortgagees must name them.
4. Facts true pleading.
5. General charge of combination too loose.
6. That defendant was appointed resident at the *East India* Company's factory, &c. not a sufficient charge, that he was factor.
7. Plea to the jurisdiction by the *East India* Company to the bill of the Nabob of the *Carnatic* over-ruled.
8. } Plea to jurisdiction must shew another : of all Courts
9. } absurd.
10. Plea must tender issuable matter.
11. Plea of Statute of Frauds to parol variation of agreement for lease. Distinction as to waiver or trust.
12. Inconsistent plea bad.
13. Plea, merely denying notice, disallowed.
14. Defendants to bills by rectors, &c. may split their titles.
15. Plea of fine, not alleging seisin, over-ruled.
16. Plea to bill of discovery in aid of action under the Statute for money lost at play by a bankrupt, that the action was not commenced, &c. within three months, over-ruled.
17. Plea of the Statute of Limitations to bill for an annuity over-ruled, without prejudice.
18. Plea of forty years possession without account, &c. against an old mortgage allowed.
19. Plea of suit in *Ireland* for the same matter over-ruled.
20. To bill for specific performance plea of the Statute of Frauds ordered to stand for an answer.
21. Construction of the interrogating by the alleging part.
22. Plea covering too much.
23. Plea of the Statute of Limitations ordered to stand for an answer, with liberty, &c.
24. Whether averments in plea, as well as answer, necessary.
25. Plea in bar at law. Distinction in equity.
26. Plea good to relief; bad to discovery.

27. Plea good, and bad, in part. Distinction as to demurrer.
28. Supplemental bill by tenant in tail in remainder, not through the former tenant in tail, but by a new limitation.
29. Claim of charge on the whole inheritance continued by supplemental bill against the second son, remainder-man in tail.
30. Bill for a charge continued, for or against intermediate remainder-man coming *in esse* by bill, stating the former proceedings, subject to bringing forward any different circumstances.
31. Plea, allowed to the relief, covers the discovery.
32. Want of averment, that the money was not received within six years, supplied by averment that the cause of action arose above six before the bill.
33. Particular interrogation under the general charge.
34. } Negative plea as to statements in the bill.
35. }
36. Interrogation as to incidental circumstances; not a distinct subject.
37. Formerly bill little more than the statement.
38. } Relief different from the specific prayer only by amendment.
39. }
40. The bill failing, no relief on agreement stated by the answer.
41. Relief under the general prayer, if consistent.
42. Purchase, &c. without notice.
43. To plea, in bar, of a fine direct averment of seisin necessary; not by argument only.
44. Legal bar strictly pleaded.
45. Plea, neither in bar nor abatement, nor stating the parties, informal. Leave to amend.
46. Plea, covering any fact forming a step in a criminal prosecution.
47. Plea, that the discovery will subject to penalty, does not require an answer. Distinction as to notice in a plea of purchase, &c.
48. Surplusage not open to objection as multifarious.
49. Plea covers any fact forming a link in a criminal charge.
50. Plea must be on a single point; but may consist of a variety of facts.
51. Office of plea, generally, not denying, but displacing, the equity by a fact, perhaps the result of circumstances.
52. Denial of a fact alleged, in some instances with averments, a good plea in equity. Distinction at law.
53. Generally the bill and answer should admit a complete decree.
54. Averment of seisin and possession necessary to plea of purchase, &c.
55. Negative plea to part of the charge over-ruled.
56. Plea under order for time to answer.
57. Negative plea.

58. Prayer material in construing charges not direct.

59. Distinction in declaring for goods.

60. Not to make a case; but to state it fairly.

Upon bill by heir at law for discovering, and delivering up, or depositing, title-deeds against persons in possession of them as executors, and in possession of the premises by agreement with a tenant by the courtesy, plaintiff need not state every link of his pedigree.

*Ford v. Peering.* - - - - - I. 72

To a charge in the bill, that *A.* died seised in fee of estates in *Derbyshire* and elsewhere, plea of fine of all the estates charged in the bill, and of which *A.* died seised in fee, sufficient without averments, that they were in *Derbyshire*, and none elsewhere. *Butler v. Every.* - - - - -

I. 186

Defendant, stating himself trustee for mortgagees, decreed to deliver up deeds; because he did not name them; so that plaintiff could amend. *Earl of Scarborough v. Parker.* - - - - -

I. 267

True way of pleading is to plead facts. - - - - -

I. 285

General charge of combination to defraud too loose.

*East India Company v. Henschman.* - - - - - I. 287

Charge, that defendant was appointed resident at the *East India Company's* factory at *M.* not a sufficient charge, that he was factor. *East India Company v. Henschman.* - - - - -

I. 287

Bill by *Nabob of the Carnatic v. East India Company* for discovery and account of rents and profits of his territories while in their possession as security for debt; and for the balance; submitting to pay it, if against him. Plea, that by divers charters, &c. and statutes confirming them, defendants have sole privilege of trading to *India*, and a right to send men, ships, &c. and to commission officers to continue or make peace and war, &c. for their advantage with any natives not Christians; that plaintiff is a native sovereign, not a Christian; that all the transactions in the bill passed between him, as such sovereign, and defendants in exercise of their privileges; and related to matters transacted between them with regard to peace and war, and security and defence of their respective possessions; and therefore are not cognizable in this or any municipal Court. Plea over-ruled; and, having been once amended, farther time refused; and defendants compelled to answer immediately. *Nabob of the Carnatic v. East India Company.* - - - - -

I. 371

Plea to jurisdiction must shew another. *Nabob of the Carnatic v. East India Company.* - - - - -

I. 372

Plea to jurisdiction of all Courts absurd; because the same as plea in bar. *Nabob of the Carnatic v. East India Company.* - - - - -

I. 372



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10. Plea must tender issuable matter. - - - - -	I.	393
11. Plea of Statute of Frauds a good defence to parol variation of agreement for a lease: not if it only amounts to waiver of part, or to a declaration of trust. <i>Jordan v. Sawkins.</i> - - - - -	I.	402
12. Plea to discovery, that it may subject defendant to penalties of a Statute, and also of articles of impeachment exhibited against him by the Commons, is inconsistent; and therefore bad. <i>Nobkissen v. Hastings.</i> - - - - -	II.	84
13. Plea, averring in answer to a charge of constructive notice, that to the defendant's knowledge and belief there was no notice, disallowed: he ought to answer the facts; and the Court is to make the construction. <i>Jerrard v. Saunders.</i> - - - - -	II.	187
14. Upon bills by rectors and vicars the defendants may split their titles. - - - - -	II.	328
15. Plea of a fine over-ruled; because no seisin was alleged. <i>Page v. Lever.</i> - - - - -	II.	450
16. Plea to a bill of discovery in support of an action under Statute 9 Anne, c. 14, for money lost at play, by the assignees of the loser, a bankrupt, that the action was not commenced and the bill exhibited within three months, over-ruled. <i>Brandon v. Sands.</i> - - - - -	II.	514
17. Bill by annuitant under a Will for an account of arrears against two administrators with the Will annexed; one pleaded the Statute of Limitations to so much as sought satisfaction for the arrears, or so much as was stated to have accrued due previous to six years before the bill: he also by answer set up an agreement to relinquish the annuity: plea over-ruled without prejudice to insisting on the same matter by answer. <i>Higgins v. Crawford.</i> - - - - -	II.	571
18. Defendant pleaded forty years possession without account or admission of any debt to a bill setting up an old mortgage, and stating an account settled, and that owing to infancy, coverture, and other disabilities, plaintiffs could not proceed: the plea was allowed. <i>Blewitt v. Thomas.</i> - - - - -	II.	669
19. Plea of a suit depending in the Court of Chancery in Ireland for the same matter over-ruled. <i>Lord Dillon v. Alvares.</i> - - - - -	IV.	357
20. To a bill for specific performance of an agreement a plea of the Statute of Frauds, being coupled with another defence, was ordered to stand till the hearing. <i>Cootk v. Jackson.</i> - - - - -	VI.	12
21. The interrogating part of a bill is to be construed by the alleging part; and not to be considered more extensive. - - - - -	VI.	62
22. Plea, covering too much, ordered to stand for an answer, with liberty to except. <i>Jones v. Pengree.</i> - - - - -	VI.	580
23. Plea of the Statute of Limitations, supported by an answer, ordered to stand for an answer, with liberty to except: the charges of the bill not being sufficiently answered. <i>Bayley v. Adams.</i> - - - - -	VI.	586

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her the charges of the bill must be met by way of  
 ment in the plea, as well as by the answer, *quære*.  
*ley v. Adams.* - - - - -  
 of a plea in bar at law to confess the right to sue,  
 avoid it by matter *dehors*: so in this Court in  
 ral cases: where the plea must be supported by an  
 ver. - - - - -  
 ion as to a plea: good to the relief, but bad to the  
 very. - - - - -  
 may be good in part and bad in part. Ground of  
 distinction in that respect between a plea and a  
 urrer. - - - - -  
 it in tail, claiming upon the death of the former  
 nt in tail without issue, not through or under him,  
 by a new limitation in remainder, entitled to con-  
 e the suit of the former tenant in tail, and to the  
 efit of the proceedings, by a supplemental bill. *Lloyd*  
*ohnes.* - - - - -  
 claiming a charge upon the whole inheritance, in  
 t settlement, against the first tenant in tail in being.  
 e dies without issue, all the proceedings are had  
 nt the second son, as if he had been originally a  
 y, by supplemental bill. - - - - -  
 or the purpose of raising a charge against the in-  
 tance, divided into estates tail. An intermediate  
 ainder coming *in esse*, a bill, stating the former pro-  
 lings, is allegation sufficient to put the facts in issue  
 nt him; and, even if witnesses examined, he shall  
 e the benefit. The principle must be applied both  
 and against him; subject to this, that, where his in-  
 st is not affected by the same circumstances, he may  
 g forward the equities belonging to those different  
 umstances, as distinguishing his case, whether plain-  
 or defendant. - - - - -  
 allowed as to the relief, therefore good to the dis-  
 ery also; according to the general rule. *Sutton v.*  
*of Scarborough.* - - - - -  
 want of averment in a plea of the Statute of Limi-  
 ons, that the money was not received within six years,  
 plied in substance by the averment, that the cause of  
 on, if any, arose above six years before the bill.  
*ton v. Earl of Scarborough.* - - - - -  
 r the general charge as to the fact of payment the  
 ntiff may interrogate as to all the circumstances,  
 : go to prove or disprove the truth of the fact; as  
 n, where, &c. without particular charges. *Faulder*  
*tuart.* - - - - -  
 not of a fact *dehors* the bill, but only a negative of  
 e circumstances stated by it. - - - - -  
 merely a negation of the circumstances stated by  
 bill. - - - - -

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IX. 58

IX. 59, 60

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IX. 71

XI. 290

XI. 302

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|  | V.    |
| 36. Though under the allegation of a fact by a bill the plaintiff may interrogate to incidental circumstances, he cannot as to a distinct subject. <i>Bullock v. Richardson.</i>   | XI.   |
| 37. Formerly a bill contained little more than the statement.  | XI.   |
| 38. As to relief under the general prayer, different from that prayed specifically, and whether amendment is not necessary, <i>quære. Palk v. Lord Clinton.</i>  | XII.  |
| 39. The plaintiff praying relief, to which he is not entitled, viz. a sale under a trust, instead of redemption or foreclosure, as a mortgagee, cannot have the different relief under the general prayer. But the proper relief may be obtained by amendment; and, for that purpose another party being necessary, liberty was given to amend by adding parties (which includes the introduction in the statement of facts, consequential upon that addition;) and praying such relief as he may be advised. <i>Palk v. Lord Clinton.</i> | XII.  |
| 40. No relief under an agreement, stated by the answer: the bill not being adapted to that agreement; but framed upon a different ground; which failed. <i>Pilling v. Armitage.</i>  | XII.  |
| 41. Relief under the general prayer; if consistent with the case made by the bill. <i>Hiern v. Mill.</i>   | XIII. |
| 42. Plea of purchase for valuable consideration without notice   | XIII. |
| 43. To a plea in bar of a fine a direct, positive, averment of seisin is necessary. A plea therefore, alleging seisin only by way of argument, viz. that the party, being in possession and receipt of the rents, and being thereby seised, &c. was over-ruled; with liberty to amend. <i>Dobson v. Leadbetter.</i>  | XIII. |
| 44. A legal bar to be strictly pleaded.  | XIII. |
| 45. Plea to a bill, as revived upon the marriage of female plaintiff, alleging facts, requiring a supplemental bill; viz. a settlement. Objection of form; the plea not concluding either in bar or abatement; nor stating the necessary parties. Leave given to amend. <i>Merewether v. Mellish.</i>  | XIII. |
| 46. Transfer of stock under an agreement to satisfy the deficiency in the accounts of a banker's clerk, though he is not a party, amounts to a composition of felony, to prevent a prosecution. Defendant therefore may protect himself by plea from discovering, not only the broad leading fact, but any fact, the answer to which may form a step in the prosecution. <i>Claridge v. Hoare.</i>   | XIV.  |
| 47. Plea, that the discovery will subject the defendant to penalties, does not require the support of an answer; as a plea of purchase for valuable consideration without notice does, as to facts, from which notice is inferred. <i>Claridge v. Hoare.</i>   | XIV.  |
| 48. An allegation, merely surplusage, does not support an objection to a plea, as multifarious. <i>Claridge v. Hoare.</i>  | XIV.  |

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|---|-----------|
| 49. To a bill, stating defendant's marriage with a particular woman, plea, that she is his sister, protects him from discovery of any fact, forming a link in the chain. -  | XIV. 65   |
| 50. A plea must reduce the defence to a single point; which however may consist of a variety of facts. - -  | XV. 82    |
| 51. Office of a plea, generally, not to deny the equity, but to bring forward a fact, the result, perhaps, of a combination of circumstances, which, if true, displaces the equity. - - - - -   | XV. 377   |
| 52. Distinction as to pleading between law and equity: the latter admitting the denial of some fact, alleged by the bill, in some instances with certain averments, as a good plea. - - - - -   | XV. 377   |
| 53. Generally, the bill and answer should form a record, upon which a complete decree may be obtained. - -  | XV. 378   |
| 54. Defendant, pleading purchase for valuable consideration without notice, must aver, that the vendor was seised; and was in possession; which would be satisfied by the possession of the tenant. - - - - -   | XVI. 252  |
| 55. Negative plea. To a bill for an account of stone taken from the plaintiff's quarry under a promise to account, alleging assurances, that accounts were kept, plea, denying only the promise to account, but not that the accounts had been kept, over-ruled. <i>Jones v. Davis.</i> - | XVI. 262  |
| 56. Plea, filed under an order for time to answer, regular. <i>De Minckuitz v. Udney.</i> - - - - -   | XVI. 355  |
| 57. Negative plea. - - - - -  | XVI. 387  |
| 58. Prayer material in construing charges not direct. -   | XVIII. 80 |
| 59. Distinction in declaring for goods bargained and sold, or sold and delivered. - - - - -   | XIX. 609  |
| 60. The office of a Pleader is, not to make a case, but to state it fairly, according to his instructions. - -  | III. 501  |

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### ANSWER.—DEMURRER.

- ANSWER.**—1. That defendant had no concern in the business, though on that fact there can be no decree, must be full.
2. Mistake cured by reference to the instrument.
  3. Stating purchase for value, &c. sufficient.
  4. } Not setting forth an account, the ground of which
  5. } is denied.
  6. Impertinent by stating a bill of costs at length; though particulars called for.
  7. Admission of assets prevents the account.
  8. Instrument part of the answer by reference.
  9. Merely evasive taken off the file.
  10. Refusing a full answer.
  11. Admitting the agreement; and insisting on the statute.
  12. Where not bound to answer.

13. Refusing a full discovery, defendant compelled to give a full answer.
14. Supporting plea must deny generally by averment.
1. Defendant to bill for discovery and account, objecting by answer, that he had no concern in the business, must answer fully; though such a plea would bar both discovery and relief: but if the fact is so, there cannot be a decree against him. *Cartwright v. Hateley*. - - - I. 292
  2. Defendant not bound by a mistake in his answer as to the effect of an instrument, where the answer referred to the instrument. *Jones v. Smith*. - - - II. 372
  3. Defendant, stating by answer a purchase for valuable consideration without notice, not compelled to answer farther (a). *Jerrard v. Saunders*. - - - II. 454
  4. The answer need not set forth an account, where the ground, upon which it is prayed, is denied: as where the bill charged a dealing in pictures by commission, and the answer denied that; and stated, that the defendant sold them to the plaintiff in the course of his trade (b). *Marquis of Donegal v. Stewart*. - - - III. 446
  5. Administrator, disputing by his answer the foundation of the bill, viz. a balance of accounts against the testator's estate, not compelled to set forth an account of the personal estate, &c. by way of schedule (c). *Phelips v. Caney*. - - - IV. 107
  6. A schedule to an answer, containing at length a bill of costs and observations with reference to a bill formerly delivered for the same business, held impertinent; though the bill called upon the defendant to set forth how he computes and makes out his demand with all the particulars relating thereto, with interrogatories pointed to the particular *items* and to a minute comparison of the two bills. *Alsager v. Johnson*. - - - IV. 217
  7. Admission of assets prevents the necessity of setting forth the accounts. *Pullen v. Smith*. - - - V. 21
  8. Effect of setting forth the contents of an instrument, referred to for the truth of the statement; making the instrument part of the answer. - - - XIV. 214
  9. An answer, merely evasive, to be considered as no answer, and taken off the file. *Smith v. Serle*. - - - XIV. 415
  10. Whether a defendant can by answer refuse to give a full answer, *quære* (d). *Rowe v. Teed*. - - - XV. 372
  11. Defendant to a bill for specific performance of an agreement within the Statute of Frauds, may by answer, admitting the agreement, take advantage of the Statute. XV. 375

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(a) See the note, Vol. II. page 458.

(b) See the note, Vol. III. page 447.

(c) See the note, Vol. IV. page 108.

(d) Since decided in the negative. See the note, Vol. XV. page 377.

12. Excepted cases, where a party is not bound to answer a particular circumstance : viz. not to criminate himself: the case of a purchaser for valuable consideration. - XV. 378
13. Defendant, refusing a full discovery, not by plea or demurrer, but by answer, compelled to make a full answer; and, on motion, to produce books, &c. *Somerville v. Mackay.* - XVI. 382
14. Plea, supported by answer, must also contain a denial generally by averment. - XVIII. 182

- DEMURRER. — 1. Admits only facts well pleaded.
2. The fraud not sufficiently connected with the transaction.
3. Confesses every thing well pleaded.
4. Charge too general.
5. } Speaking over-ruled : bad at law.
6. }
7. Where clearly the bill would be dismissed.
8. To bill multifarious.
9. Not for stating feoffment, without livery, &c.
10. Covering too much.
11. Not supported by prayer for general relief, or consequential on the discovery.
12. Over-ruled to discovery and account of payments of lottery insurances on offer to allow payments made.
13. By bankrupt to bill against him and the assignees charging fraud, &c. disallowed.
14. }
15. } To fishing or ejectment bill.
16. }
17. Over-ruled by the answer.
18. General, for want of equity.
19. To discovery, covering too much, and to relief for want of equity and parties, over-ruled.
20. General, if good to the relief.
21. To bill to have presentation delivered up, charging gross misconduct.
22. }
23. } General, if good to the relief.
24. Whether a criminal charge is not open to demurrer.
25. To supplemental bill, stating circumstances subsequent to the original bill and publication.
26. *Ore tenus* confined to that on the record.
27. General, where good to the relief.
28. To relief, giving discovery.
29. Not good, and bad, in part.
30. Covering too much : viz. the case, as well as the opinion of counsel.

1. Demurrer admits only facts well pleaded ; and the facts alone without the conclusion of law. - I. 78

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2. Demurrer allowed: the bill not connecting the fraud with the transaction sufficiently. <i>East India Company v. Henchman.</i> - - - - -	I.	287
3. Every thing well pleaded is confessed by demurrer. -	I.	289
4. Demurrer allowed to bill to perpetuate testimony to a right of common and of way; because charged so generally, that defendant could not know the point to be examined to. <i>Cresset v. Mitton.</i> - - - - -	I.	449
5. Speaking demurrer over-ruled. <i>Edsell v. Buchanan.</i> -	II.	83
6. Speaking demurrer bad at law. - - - - -	II.	83
7. Demurrer lies, where it is clear, that, taking the charges to be true, the bill would be dismissed at the hearing. <i>Uttersen v. Mair.</i> - - - - -	II.	95
8. Joint and separate demands by the same bill: demurrer allowed. <i>Harrison v. Hogg.</i> - - - - -	II.	323
9. Defendant cannot demur, because a feoffment is stated without stating living; or a bargain and sale without stating enrolment: they will be intended perfect. -	II.	327
10. Bill for discovery and delivery of a settlement, under which plaintiff claimed, and other title-deeds, and possession of the estate: demurrer to all the relief, and all the discovery, except of the settlement, for want of equity; and answer admitting the settlement and offering to produce it, and denying, that defendant had any other relative to the plaintiff's title: the title being legal, the Court would only order the settlement to be produced at the trial; the demurrer therefore going to all the relief, the defendant had leave to amend. <i>Renison v. Ashley.</i> - - - - -	II.	459
11. Where the plaintiff is entitled to the discovery he seeks in support of an action, a prayer for general relief, or for relief, that is consequential to the prayer for discovery, as an injunction, will not sustain a demurrer. <i>Brandon v. Sands.</i> - - - - -	II.	514
12. Plaintiffs, having brought an action against the defendant to recover payments made for insuring lottery tickets, prayed a discovery and account; offering to allow payments made by the defendant: as the defendant could not have that advantage at law, a demurrer was over-ruled. <i>Brandon v. Johnson.</i> - - - - -	II.	517
13. Bill against bankrupt and assignees: charging a fraudulent bankruptcy to defeat the plaintiff's execution; and stating, that under an agreement with the assignees for an arbitration the plaintiff deposited the goods for sale; the produce to be in trust according to the award; that he had lost his copy; and the assignees had obtained the original from the person, with whom it was deposited for the benefit of all parties; and refused inspection; prayed a discovery and injunction: a demurrer by the bankrupt disallowed. <i>King v. Martin.</i> - - - - -	II.	641



- . Bill prayed, that the defendant might state the particulars of his pedigree as heir, and of the births, baptism, marriages, deaths, or burials; demurrer allowed. *Ivy v. Kekewick.* - - - - - II. 679
- . Bill, charging that the defendants had got the title-deeds and mixed the boundaries, prayed a discovery, possession, and an account: demurrer allowed. *Loker v. Rolle.* III. 4
- . Bill, stating generally that under some deeds in the custody of the defendants plaintiff was entitled to some interest in some estates in their possession, prayed a discovery, and delivery of the title-deeds, possession of the estates, and an account: demurrer to the whole bill allowed. *Ryves v. Ryves.* - - - - - III. 343
- . Bill, stating a sequestration for want of an answer, prayed a discovery and account of all money or other property of the defendant in the original cause in the hands of the defendants, who were bankers, at the time of service of the sequestration, or since. Upon demurrer as to the money and answer as to the rest of the bill the *Lord Chancellor* determined against the demurrer upon the form; considering it over-ruled by the answer; and would not in that stage of the cause decide the two points: 1st, whether a sequestration upon mesne process can be executed farther than to pay the expenses: 2dly, whether a *Chose in action* is liable to sequestration. *Simmonds v. Lord Kinnaird.* - - - - - IV. 735
- . Forty-six years after a decree, directing in execution of the trusts of the Will a conveyance in fee to the tenant in tail male, having also the reversion in fee, with consent of the only intermediate remainder-man in tail male, a bill was filed against their devisee; the plaintiffs claiming under an old voluntary grant out of the reversion, the estates tail being spent and no Recovery; and praying a discovery and conveyance. A general demurrer was allowed; though the decree and conveyance were stated only by way of pretence, not expressly charged: the whole right as against the defendants being founded on that conveyance. *Fletcher v. Tollet.* - V. 3
- . Bill by the *East India Company* claiming from a part-owner of a ship, freighted by them, double the sum received by him for the sale of the command, to be paid or allowed under the charter-party and a bye-law of the Company, one moiety to their use, the other to be paid or returned to the person, who shall give the Company information; and make proof; the deed being on settling the account cancelled through ignorance of the fact. Demurrer to the discovery, because it might subject the defendant to penalty, covering not only the direct charge, but also circumstances of mere inducement, as the execution and cancellation of the deed, and to the relief,

- generally, for want of equity, and for defect of parties, viz. the other part-owners, particularly one, who executed, and the informer, was over-ruled. *East India Company v. Neave.* - - - - - Vol. 1
20. Demurrer both to the discovery and relief, if good as to the latter, shall be allowed as to both; though the plaintiff may be entitled to the discovery. - - - - - V.
21. Demurrer allowed to a bill to have a presentation to a living upon the next avoidance delivered up; charging the defendant with gross misconduct in obtaining it, and in other respects, while a private tutor in the family. *M'Namara v. —.* - - - - - V. 1
22. If the plaintiff is not entitled to the relief, though he is entitled to discovery, a general demurrer is good. - - - - - VI.
23. General demurrer, where the plaintiff is not entitled to relief. *Corporation of Carlisle v. Wilson.* - - - - - XIII. 2
24. Whether a bill, stating a payment to protect an individual from prosecution for felony, desiring the assistance of the Court, is not open to demurrer on that ground, *quære. Claridge v. Hoare.* - - - - - XIV. 1
25. Demurrer allowed to a supplemental bill; as stating circumstances subsequent, not only to the original bill, but to publication; first, as not properly supplemental matter: secondly, as not material. If material, the benefit might be obtained in another shape: perhaps by a special application for the opportunity of examining witnesses, or a bill of discovery; as the object may be discovery only, or also relief; and in that case that the answer or evidence may be read at the hearing. *Milner v. Lord Harewood.* - - - - - XVII. 14
26. To a bill by an heir against a claim under a devise for a discovery, and that the witnesses may be examined *de bene esse*, and their testimony recorded, a general demurrer for want of equity being allowed, the defendant was not permitted to demur *ore tenus* as to the examination of witnesses; not being made the subject of demurrer on the record. *Pitts v. Short.* - - - - - XVII. 2
27. General demurrer lies, where the plaintiff, though entitled to discovery, is not entitled to relief. - - - - - XVII. 2
28. The rule, that, the plaintiff being entitled to discovery only, and not to the relief, a general demurrer lies, does not prevent a demurrer to the relief, giving the discovery. *Todd v. Gee.* - - - - - XVII. 2
29. Demurrer not good in part, and bad in part: therefore, going to relief, to which the plaintiff was entitled, over-ruled generally: the plaintiff, a purchaser, not being barred by a Report against the title in another suit, upon a bill against him by the vendors. *Todd v. Gee.* - - - - - XVII. 2
30. Demurrer to so much of a bill as called for a discovery of cases, laid before Counsel, and the opinions, over-ruled,

as covering facts material to the plaintiff's case. *Richards v. Jackson.* - - - - - XVIII. 472

See *Alien* (*Enemy* 4.) *Answer. Bankrupt* (*Abatement* 4.) *Construction* 3. *Contract* 17. 40. (*Specific Performance* 39.) *Copyright* 1. *Costs* 9. *Demurrer. Disclaimer. Election of Curate and Vicar* 2. *Felony* 3. *Fraud* 17. *Frauds, Statute of,* 3. *Interpleader* 8. *Jurisdiction* 27. *Laches* 13. 14. *Limitation (Time* 20. 21. 26.) *Mortgage* 4. 18. 55. *Partner* 55. 59. 63. *Practice* 80. 249. *Purchase* 24. 25. 26. *Review. Tithe* 1. 19. *Use. Variance. Vendor & Vendee* 21.

PLEDGE.

See *Bankrupt* (*Pledge* 1.) *Bill of Exchange* 13. (*Indorsement* 2.) *Deposit. Lien* 4. 5. *Mortgage* 3.

PLENIPOTENTIARY.

See *Power* 3.

POLICY OF INSURANCE.

See *Alien* (*Enemy* 1.) *Annuity* (*Memorial* 7. 8.) *Bankrupt* 13. *Insurance. Set-off* 8.

POLICY, PUBLIC.

1. Jurisdiction to have instrument delivered up.
2. Relief to *particeps criminis*.

Jurisdiction of equity to order an instrument to be delivered up: though void at law; as if against policy.

XI. 535

Where the transaction is against policy, relief to a *particeps criminis*. - - - - -

XI. 535

See *Registry* (*Ship* 4. 6. 7.)

POLITICAL TREATY.

See *Jurisdiction*.

POOR RATES.

See *Charity* 45. 70.

PORTION.

1. Leaning against double portions, in favour, not of the eldest son, but of all to take.
2. Vested at twenty-one, though payment postponed to the father's death.
3. Leaning against raising portion or maintenance out of a reversionary term.
4. Presumption against double portions.
- (a)
6. Out of reversionary term on particular expression and fair construction.
7. Vested in the case of parent and child against express words by implication.
8. Vesting at twenty-one, &c. not prevented by survivorship on death before the time of payment, postponed to the parents' death.

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(a) No. 5, omitted by mistake.

9. Personal property under intestacy not a satisfaction by advancement.
10. Land by settlement a portion under the Statute of Distributions: whether by descent; and whether provision by Will can be considered advancement in life.
11. From parent, &c.: satisfaction not prevented by small difference; as in case of a stranger.
12. Vesting at twenty-one in an only younger child not prevented by death before payable, viz. the father's death; though not to be raised in that event.
13. Forfeited under a limitation over on marriage without consent.
14. At twenty-one, if after death of both parents, and interest for maintenance until payable: interest from the father's death during minority, the mother surviving.
15. Legacy from parent.
16. Effect of the leaning against double portions.
17. By a person, giving a legacy; evidence as to standing in *loco parentis*.
18. Presumed satisfaction of a legacy to legitimate, not to natural, child.
19. Legacy from the father.

1. Courts of Equity lean against double portions, not in favour of the eldest son, but of all to take under the limitations. - - - - -

I.

2. Settlement on marriage to the use of the husband for life; remainder to trustees for five hundred years in trust after the death of the husband and not before, unless with his consent as therein mentioned, to raise portions for younger children, to be paid in such shares and at such times as the husband and wife should appoint; in default of appointment, to be paid, if but one besides an eldest or only son, £5000; if two, £6000; if three, £8000; and if four or more, £10,000, equally, to be paid respectively at twenty-one, or marriage of daughters if after the age of sixteen, if such times of payment happen after the death of the husband; if in his life, then within twelve months after his decease, and not before, unless with such consent; provided, that if any of such younger children should die before his, her, or their portions should become payable, so that the number should be reduced to less than four, no more should be raised than what would make the whole sum for the portion of the survivor or survivors of such younger children equal to the sum originally limited for the portion or portions of such child or children, if one, two, or three. Three younger children only survived their father; but more than four had attained twenty-one. The sum to be raised is £10,000. *Willis v. Willis*. - - - - -

III.

urt leans against the construction for raising por-  
or maintenance out of a reversionary term; and  
that principle, when the term fell into possession,  
ie portion was raised, refused to charge the differ-  
between the sum annually allowed by the infant's  
father for her maintenance and the sum charged.

*Clinton v. Lord Robert Seymour.* - - -  
presuming against double portions. - - -

IV. 440  
V. 381

raised out of a reversionary term. The rule is,  
t depends upon the particular penning of the  
and a fair construction of the whole instrument as  
intention. Upon a limitation to the parent for  
th a term to raise portions at twenty-one or mar-  
if there is nothing more, and the interests are  
, and the contingencies have happened, at which  
ortions are to be paid, upon the general rule the  
it is payable; and the portions must be raised by  
mortgage of the term. *Codrington v. Lord Foley.*

VI. 364

vested in the case of parent and child by im-  
on from the whole settlement, against express  
; and a clause of survivorship upon the death of  
l, before the portion should become payable, was  
the authorities construed, before it should be  
. *Hope v. Lord Clifden.* - - -

VI. 499

, to be paid or transferred at twenty-one or mar-  
if in the lives of the parents, entitled for life, not  
paid, assigned, or transferred, till their decease;  
urvivorship in case of the death of any before his,  
r their shares should be payable, &c. vested at  
-one or marriage in the life of the parents. Upon  
er proviso for a limitation over in the event of no  
iving at the death of the survivor of the parents,  
death of all, before the fund should be so, as  
aid, payable, &c. whether contingent, *quære.*  
*Wick v. Legh.* - - -

IX. 300

erm by the Will of the grand-father for raising  
is; provided among other events, if the children  
be by their father in his life-time advanced and  
ed with portions as good or greater, to cease.  
al property under the intestacy of the father not  
action. *Twisden v. Twisden.* - - -

IX. 413

laimed by settlement, held a portion under the  
of Distributions. As to land by descent, *quære*;  
ether a provision by Will can be considered an  
ement in the life. - - -

IX. 425

he portions come from the same party, the father,  
rson *in loco parentis*, small circumstances of dif-  
, where the value is substantially the same to the

- child, shall not prevent satisfaction; that would in the case of a stranger. - - - - -
12. Term in trust after the decease of the father, in case he shall leave a younger child, &c. to raise portions; to be paid according to appointment, and in default, &c. at twenty-one, or marriage; with a provision for advancement in the life of the father by his direction, and survivorship upon the death of any child, before the portion shall be payable; and if there shall be no such child, or all die, before the portions become payable, not to be raised. Vested in an only younger child; who, having attained twenty-one, died in the life of the father; no appointment having been made. *Powis v. Burdett.* -
13. Portion, given over as to the greater part upon marriage without consent of executors: a conditional consent, upon the offer of a settlement, retracted on a subsequent refusal to settle; and the marriage taking place afterwards: no relief against the forfeiture. *Dashwood v. Lord Bulkeley.* - - - - -
14. Trust term, by marriage settlement, without impeachment of waste, immediately expectant upon the father's death, subject to a jointure to the mother, by sale or mortgage, rents and profits, or by any other ways and means, to raise portions for younger children, at twenty-one if after the death of both parents; and by such ways and means as the trustees think fit to raise interest for maintenance, until the portions shall respectively become payable; if the remainder-man should pay the portions and the interest, or if there should be no younger child, the term, or so much as should remain unsold, to attend the inheritance; which was limited in the usual way. Interest due from the death of the father in the minority of all the children; and the wife surviving. *Lyddon v. Lyddon.* - - - - -
15. Legacy by a parent to a child, the purpose not stated, understood as a portion. - - - - -
16. Leaning against double portions: effect in some cases, that a portion has been held to satisfy a legacy of much greater amount. - - - - -
17. As to the evidence with regard to a person, giving a legacy and advancing a portion, as standing *in loco parentis, quære.* - - - - -
18. Distinction between legitimate and natural child; as to the presumed satisfaction of a legacy by a portion in the former case: not in the latter; which is considered the case of a stranger. - - - - -
19. Legacy from a father to a child understood as a portion; though not so described. - - - - -

See Articles 2. Exoneration 21. Implication 2. Interest 21. Satisfaction 2. 4. 7. 13. 14. 16. 22. 26. 27. 28. 29. 33. 35. 36. 38. 39. 40. 41. 42. 43. 44. 45. 46. Vesting 4. Will 117. York.

## POSSESSIO FRATRIS.—POWER.

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### POSSESSIO FRATRIS.

1. Question depending on the implication of an estate for life.
- . A question upon the rule "*possessio fratris*," &c. depending upon the implication of an estate for life, was not determined. *Wheldale v. Partridge*. - - - V. 388

### POSSESSION.

- . Possession of a house by delivery of the keys. - - - V. 818

### POSSIBILITY.

- . Possibility a present interest; and capable of devise. - XVII. 182
- See *Will* 6.

### POSTHUMOUS CHILD.

See *Child* 2. *Infant en ventre*. *Vesting* 22. *Will* 79.  
(*Executory Devise* 4.)

### POST NUPTIAL SETTLEMENT.

See *Creditor* 3.

### POST-OBIT.

1. May be valid; though not reasonable: but strictly examined.
- . Post-obit security, though not on reasonable terms, may be valid; but on grounds of public policy strictly examined. *Curling v. Marquis of Townshend*. - - - XIX. 628
- See *Usury* 3.

### POWDER MILL.

See *Injunction* 60. *Nuisance* 5. 6.

### POWER.

1. Distinguished from absolute legacy.
2. Must be executed.
3. Of Plenipotentiary to bind the country.
4. To raise and appoint well executed by deed, to be paid to his executors, &c.
5. Act under it as if incorporated in the deed, when executed.
6. No estate under it before execution. Effect of general words.
7. Power to sell or exchange: partition.
8. To revoke and substitute other estates: whether equitable for legal, bad at law, sufficient in equity.
9. To charge executed by sale.
10. Considered as trust.
11. Distinct from a limited interest.
12. Distinguished from property: not assets, unless executed.



13. Not executed by mere republication of Will.
  14. Want of execution not supplied; though defective aided.
  15. } Distinguished from trust: not executed by the Court;
  16. } as a trust failing by accident: if partaking of the
  16. } nature and qualities of a trust, executed to a certain extent.
  17. To be executed as a duty, upon the principle of trust, without discretion.
  18. Not executed by a general bequest.
  19. For execution by Will distinct intention necessary: not direct reference.
  20. Defective execution supplied.
  21. Execution by implication.
  22. Distinguished from property.
  23. Of sale not executed by partition.
  24. Of exchange or partition does not include sale.
  25. To alter uses limited by the contract.
  26. Want of execution not supplied even for creditors: but defect aided.
  27. Whether defective execution for a stranger would be supplied for creditors.
  28. Not implied; and construed strictly. Defects supplied: not want of execution.
  29. Construction of settlement to pay according to appointment by Deed or Will; as revoking a prior Will.
  30. Distinguished from property.
  31. Limited upon interest for life.
  32. Amounting to property, notwithstanding a limitation of what should be undisposed.
  33. Executed by Will without express reference.
  34. Of leasing: distinction whether by a person having a particular estate or the inheritance.
  35. Reason of supplying defective execution, &c. for a child questionable.
  36. Joint determined by death of one.
  37. Distinguished from property.
  38. Execution a limitation of a use.
  39. To raise jointure, charge portions and lease: as to the mode of execution.
  40. Distinction upon execution in law and equity.
  41. Non-conformity of the nature of estates, raised by execution, not of itself sufficient to reduce the legal effect.
  42. Execution a limitation of a use.
  43. Instrument executing construed with reference: but the excess, the legal effect of a deed, not corrected.
  44. Of absolute disposition does not require a formal appointment.
1. Testator devised to his wife several houses; to his sisters his money in securities for their lives; then divided his fortune in small legacies; but the legatees to take nothing till the death of his wife and sisters; and made residuary legatees: Under the following clause, "I empower my wife to give away at her death £1000 to A. and B. £100 each the rest to be disposed of by

## POWER.

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- “her Will,” there is no absolute legacy, but a naked power to the wife; who being dead without any disposition, the objects specified are not entitled. *Bull v. Vardy.* - - - - - I. 270
- . A power must be executed in order to create a charge. I. 272
- . Acts done by subjects under powers given by the Country bind the Country; as signing of Plenipotentiary, in its own nature; though that is not now understood to bind till ratification. - - - - - I. 392
- . Three powers by settlement; first, to husband and wife jointly, to raise and appoint £3000; secondly, to husband, to raise and appoint £2000; thirdly, to survivor, to raise and appoint such sum as would with the sum before raised make £5000. The wife joining in raising £3000 under the joint power for the husband, he covenanted not to charge by the power reserved to him alone or any other power whatsoever during her life, and so long as said £3000 should remain unpaid, without her consent. After her death he by deed-poll did charge with £2000 more, to be paid to his executors for debts, &c. and otherwise in performance of his Will, or as he should appoint by it; and died, leaving his wife executrix, without taking notice by his Will of the charge: but the deed-poll was found uncanceled among his papers: The £2000 well charged; and went to the executrix without a special appointment. *Earl of Uxbridge v. Bayly.* - - - - - I. 499
- . Act done under power in a deed is as if incorporated in the deed, when executed. - - - - - I. 510
- . An interest under a power of disposition is not before execution the estate of the party; and will not pass by general words; nor are they alone sufficient to dispose free from incumbrance. - - - - - I. 525
- . Partition of an estate in common is a good execution of a power to sell or exchange (a). *Abel v. Heathcote.* - II. 98
- . Power to revoke uses, substituting other estates: *Quære*, Whether a substitution of equitable for legal estates, though a bad execution at law, is sufficient in equity; as where it is done by appointing under a power; and declaring uses upon the appointment; which are consequently mere trusts. *Cox v. Chamberlain.* - IV. 631
- . Covenant to settle an estate in strict settlement: subject to a power to the father, tenant for life, in case there should be any younger child or children, to charge such sum or sums for such younger child or children, payable in such proportions, and at such times as he should appoint. The power was held well executed by a Will, directing a sale and appointing the money. *Long v. Long.* - - - - - V. 445

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(a) Over-ruled. See post, No. 23, and the note, Vol. II. page 101.

- |   | Vol. Page |
|---|-----------|
| 10. Powers in this Court considered as trusts. - - -  | V. 856    |
| 11. Where a particular, limited, interest and a power concur, though the latter alone might amount to an absolute gift, they are distinct. - - -  | VII. 398  |
| 12. Distinction between a power and absolute property. A power, unless executed, not assets for debts. (Affirmed.) <i>Holmes v. Coghill.</i> - - - VII. 499.  | VIII. 206 |
| 13. Power executed by Will, but afterwards discharged; and a new power created. A subsequent codicil will not by the mere effect of re-publishing the Will be an execution of the power. (Affirmed.) <i>Holmes v. Coghill.</i> VII. 499.  | VIII. 206 |
| 14. Though the rule is settled, perhaps with some violation of principle, but with no practical inconvenience, that equity will in certain cases aid a defective execution of a power, the want of execution cannot be supplied. <i>Holmes v. Coghill.</i> - - -  | VII. 499  |
| 15. Power considered as distinguished from trust. This Court cannot execute a mere power; but will execute a trust, which fails by the death of the trustee, or accident. - - -   | VIII. 570 |
| 16. Power partaking of the nature and qualities of a trust; so that, if not executed by the party, this Court will, to a certain extent, execute it. - - -  | VIII. 570 |
| 17. Power, which by the Will the party is required to execute as a duty. He is a trustee for the exercise of it; and has no discretion, whether he will exercise it or not. The Court adopts the principle as to trusts; and will not permit his negligence, accident, or other circumstances to disappoint the interest of those, for whose benefit he is to execute it. - - - | VIII. 574 |
| 18. Power not executed by a general bequest of "my estate and effects;" which will pass only what the testator had an interest in, not what he has an authority over. - - -   | VIII. 588 |
| 19. Though to effect the execution of a power by Will a direct reference to the power is not necessary, the intention must distinctly point to the subject of it; as if something is included, which the testator had not otherwise than under the power; and part of the Will, unless applied to it, would be wholly inoperative <i>Bennett v. Aburrow.</i> - - -              | VIII. 609 |
| 20. Particular jurisdiction of a Court of Equity to supply defects in the execution of a power. - - -   | IX. 394   |
| 21. Not necessary to recite an intention to execute a power; if the act can be done only by that authority. But, where the act purports to pass the interest, it shall be considered so intended, and not to exercise an authority. - - -   | X. 257    |
| 22. An express estate for life, with a power to dispose by Will, does not give the absolute interest, so as to preclude   |           |

## POWER.

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the necessity of executing the power. An execution by Will revoked by a subsequent conveyance upon a sale by the tenant for life, having obtained the legal estate; and that not being an execution within the intent of the power, the estate passed under a general residuary devise against the purchaser. <i>Reid v. Shergold</i> .	X. 370
3. Power of sale not well executed by a partition. <i>M'Queen v. Farquhar</i> . - - - - -	XI. 467
4. Power of exchange or partition does not include a power of sale. - - - - -	XI. 473
5. Under a power to alter uses the new use will not arise except in the very circumstances prescribed by the contract.	XI. 475
6. Though equity will in certain cases aid a defective execution of a power, the want of execution cannot be supplied even for creditors. <i>Holmes v. Coghill</i> . -	XII. 206
7. Power defectively executed for a stranger. Whether the Court would supply the defect, and give the fund to creditors, <i>quære</i> . - - - - -	XII. 213
8. Powers must be expressed, not implied; and are construed strictly. Though defects in execution are in certain cases supplied in equity: the want of execution cannot be supplied. - - - - -	XIII. 114
9. Settlement of personal estate upon a second marriage, upon trust to pay to such persons, &c. as the settler shall by Deed or Will appoint; and, in default thereof, to his issue. Construction upon the whole, that it was to operate; unless a subsequent instrument should be executed. A prior Will therefore revoked. <i>Leigh v. Norbury</i> . - - - - -	XIII. 340
10. Distinction between property and power. <i>Bradley v. Westcott</i> . - - - - -	XIII. 445
11. Bequest of all money, stock, &c. and all other personal estate, to the sole use of the testator's wife for life, to be at her full, free, and absolute, disposal during her life, without being liable to any account; and after her decease certain articles specified and £500 according to her appointment by Will; in default of appointment, to fall into the residue; which was disposed of. An interest for life only; with a limited power of disposition. <i>Bradley v. Westcott</i> . - - - - -	XIII. 445
12. Effect of power to dispose; amounting to property; notwithstanding a limitation of what should be left undisposed of; from the uncertainty. - - - - -	XIII. 451
13. Power may be executed by Will, applying to the subject, without an express reference to the power. - - -	XIII. 453
14. Lease, under a power by a person, having only a particular estate, if not conformable to the power, is not good at law: but, where the persons, granting the lease, have at law the inheritance, with directions only, how they are to execute leases, the legal estate passes. -	XIII. 580

35. As to the reason of supplying a defective execution of a power, or the want of a surrender of copyhold estate, for a child, *quære*. - - - - - XV.
36. Joint authority determined by the death of one. - - - XVI.
37. Devise and bequest of real and personal estate in trust to pay the rents, dividends, &c. to the separate use of a married woman for life; and after her decease to convey, &c. according to her appointment by deed or will; with a limitation over, in case of her death in the life of the testatrix, or in default of appointment. Absolute property: notwithstanding the indication of an intention, that the estate should remain in the trustee for her life, with powers, inconsistent in a great degree with the supposition of her having, or being able to acquire, the absolute interest. *Barford v. Street*. - XVI.
38. Execution of a power is a limitation of a use; which must arise, if at all, at the time of execution; and is, as if expressed in the original settlement. - - - XVII.
39. Devise, subject as to part to a devise to trustees and their heirs for debts in aid of the personal estate, and as to part to mortgages in fee, to sons and a daughter, and their respective issue male in strict settlement, &c.; with power to the sons respectively, when in possession, to convey or appoint all or any part to trustees on trust by the rents and profits to raise a rent-charge as and for a jointure for any wife or wives for each such wife's natural life only; and also to charge portions by deed, and to lease for twenty-one years. Execution of the power by conveyance to trustees and their heirs on trust by the rents and profits to raise and pay a jointure during the wife's natural life only; and charging portions; with covenant for title, and for quiet enjoyment by the trustees during the natural life only of the wife. As to the estate of the trustees at law, *quære*: the Court of *King's Bench* certifying, that they took an estate in fee; and the Court of *Common Pleas*, that they took no estate whatsoever. Recovery by tenant in tail, the tenants for life being dead, the mortgages outstanding, the debts unpaid, and the trustees for the jointure not parties, valid; as an equitable recovery, if those trustees took a fee: as to the equitable estates, viz. subject to the debts and mortgages, if an estate for life; and, as to the legal estates, if a limitation in a deed can be reduced by implication, the circumstances, that the purpose did not require a fee, that it might disturb subsequent estates in the instrument creating the power, and the restraint of the covenant for quiet enjoyment to the wife's life, could not prevail against the legal effect of the limitation to the trustees and their heirs. The proper mode of executing such a power is limiting the rent-charge to the wife by way of jointure, secured, if not by the ordinary

power of entry and distress, by a trust term for ninety-nine years, with a proviso for cesser on payment of the jointure during her life, and all arrears at her death.	
<i>Wykham v. Wykham.</i> - - - - -	XVIII. 395
Distinction upon the execution of a power in Law and Equity; a strict, literal, i. e. a due execution, the same in both; but, though void at law, the substantial intention upon meritorious consideration enforced in equity.	
<i>Wykham v. Wykham.</i> - - - - -	XVIII. 395
Non-conformity of the nature of estates, raised by the execution of a power, to those in the instrument creating it is not of itself sufficient to reduce the legal effect of the latter instrument by reference to the former. -	XVIII. 416
Execution of a power a limitation of a use, not requiring an immediately preceding estate of freehold. -	XVIII. 416
Construction of an instrument, intended to be an execution of a power, with reference to the instrument creating it; as operating to create an estate by way of use, to be put in its proper place; in remainder, for instance, the words importing an immediate conveyance; but the excess at law, the legal effect of words in a deed, beyond the occasion and purpose, not corrected. -	XVIII. 419
Legacy in trust to be laid out in stock: the dividends, as they come due, to <i>A.</i> for life, and after her decease to pay the principal according to her appointment by Will or otherwise; with power to her to purchase with it an annuity with the approbation of the trustees, but not to sell it. <i>A.</i> has an absolute power of disposition; and her bill was held a sufficient indication of her intention to take the whole; making a formal appointment in writing unnecessary. <i>Irwin v. Farrer.</i> - - - - -	XIX. 86

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APPOINTMENT.—OF ATTORNEY.

- POINTMENT.—1. "Among the issue:" extent and limit of that term: power only as to the proportions: not illusory.
2. "From time to time" as to rents, &c. omitted as to the personal property.
3. Illusory may be accounted for.
4. Trustee may recal; but cannot appropriate to himself.
5. Vesting in life of tenant for life with a power.
6. Excess of power void: what is ill appointed goes as in default.
7. Advancement in marriage a good reason for a small share.
8. One object dead, that share goes as in default: Executed as to the others.
9. Partial according to the power not affected by appointment of the residue, void as excluding one object.

- APPOINTMENT.—10.** “Among children and grand-children or “issue” extent and limit of that term. What is ill appointed goes as in default.
11. *Cypres* does not extend to personal property.
  12. Preceding limitations void, subsequent not accelerated.
  13. Application of *cy pres* to real estate.
  14. To grand-children under power, limited to children, void, for the excess only. Remainders in default vested, subject to be divested. Satisfaction of a share by portion on marriage.
  15. By father to a child, whose share he had purchased, cannot exceed his share in default.
  16. Not executed by general disposition by Will.
  17. For debts: a different application by the party established after a year without application.
  18. Under power coupled with an interest, applicable to both, held to convey the interest, not as executing the power.
  19. Void for the excess only.
  20. Of ten guineas illusory. Interests vested, subject to be divested.
  21. “To and among,” each must have a part: the amount not considered at law.
  22. A very small share not illusory on circumstances.
  23. To one of six under voluntary bond to pay among all such child or children, established.
  24. Illusory.
  25. { Not illusory, if a sufficient reason on the
  26. { face of it; perhaps, between parent
  27. { and child, clearly proved.
  27. Executed in part by transfer on petition, stating the desire of the party having the power for an equal division. Completed by the Court.
  28. Death of one object before appointment.
  29. Interest vested subject to it.
  30. Difference between land and money.
  31. Must give each a substantial share; unless a good reason; as a provision by the person executing, not *aliunde*.
  32. To one or more under power “to such “child and children.”
  33. { Equality among several objects, without a
  34. { good reason not now required: a share
  35. { however sufficient at law.
  35. “To my residuary legatee after named” not extended to another added by codicil.



- POINTMENT.—36. Of money produced by sale under power to appoint real estate.
37. Excluding one of “such child or children.”
38. Charge under power to appoint land.
39. Discretion, given to executors, not assumed by the Court.
40. Under bequest to *A.* or *B.* at the discretion of *C.*
41. Void as to the excess of power; and the principle of *cy pres* not applicable.
42. Interest for life with power of appointment.
43. Not executed by Will without reference to the power or subject.
44. “To such uses as *A.* shall appoint, and in “default, &c. to him in fee,” he has the fee until appointment.
45. “To such children,” &c. exclusive.
46. To be executed by Will: the judgment of the Ecclesiastical Court required; but not conclusive.
47. Illusory. Void as to excess of power.
48. Unequal under discretion, and in a considerable degree until illusory.
49. Under “to or among one or more younger “children” one of two removed by advancement, the other takes the whole as in case of death.
50. Great inequality held not illusory.
51. } Operates as the limitation of a use: the fee
52. } vesting subject to it.
53. }
54. Lapsed share goes as in default.
55. } Great inequality held not illusory.
56. }
57. Not by general words in a Will.
58. Not by appointing executor.
59. Distinction between gift for life and indefinite, with power of disposition: the former requiring appointment.
60. Interest for life with a power.
61. } Illusory. Equitable jurisdiction discre-
62. } tionary on the circumstances.

. Gift to *A.* and his issue, to be divided among them, as he thinks fit: the issue have an interest at all events; and *A.* has no authority but as to the proportions. If no appointment, equally. Where to be divided among issue, the proportions must not be illusory. “*Issue*” will extend to any remote degree as a description of objects of the power of *A.* to distribute among them, as he thinks fit: but they must all be in existence during his life. -

*Quære*, whether the words “*from time to time*” in a power to appoint rents and profits of real estate, but omitted in the power to appoint the produce of the per-

sonal estate, will prevent a sweeping appointment of the whole; the power extending to the whole after death.

*Pybus v. Smith.* - - - - -

I.

3. An illusory share may be accounted for by circumstances.

*Boyle v. Bishop of Peterborough.* - - - - -

I.

4. Trustee to appoint cannot appropriate parts of the sum appointed to himself; but may recal it into the original fund. *Boyle v. Bishop of Peterborough.* - - - - -

I.

5. Fund given to A. for life with power of appointment during life, and, after death, for want of appointment over: it is not a vested interest till after death of tenant for life; the power subsisting upon it (a). - - - - -

I.

6. By articles the wife's fortune and an equal sum, advanced by the husband, were agreed to be settled for the husband for their joint lives; and, if he should die first, leaving issue by her, for her for life; after her decease as to the capital in such manner as he should appoint; in default of appointment to be divided equally among the issue at twenty-one with maintenance and survivorship: after marriage in pursuance of the articles an estate purchased with the fund was settled upon the husband for the joint lives of him and his wife; remainder to trustees to preserve, &c. remainder in case of his death first without issue to certain uses; remainder in case of his death first, leaving any child or children, to the wife for life; remainder to all the children in such shares, as the husband should appoint, for want of appointment, equally in tail, with cross remainders; remainder to the heirs of the husband. Children only are the objects; and an appointment to a child for life, remainder to his children as he shall appoint, is an excess of power; and the doctrine of *cy pres* by giving the child an estate tail is not applicable: but the appointment is void for the excess only; and what is ill appointed goes as in default of appointment. *Bristow v. Warde.* - - - - -

II. 31

7. Testator under a power to appoint among children appointed to the husband of a daughter for life, and if she survived him, to her for life; and, having advanced her in marriage, recited that as a reason for giving her a small share; this is not illusory. *Bristow v. Warde.* -

II. 31

8. £4000 settled on marriage in trust after the decease of the husband and wife, to pay among all and every the child and children other than an eldest or only son, at such times and in such proportions as he or she, or the survivor, should appoint by deed or will; for want of appointment, among such child and children, other than, &c. equally to be divided; if but one, to that one;

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(a) See the note, and post, Nos. 14. 28. 29.

payable at twenty-one or marriage, or as soon after as the life interests should drop: the shares of any dying before payable in the £4000, or so much as should not be appointed to go to the survivors at the same time. There were four younger children: the marriage settlement of one recited, that she was entitled to £1000, part of this fund; one-fourth of it was appointed to another on his marriage; and to a third £1000, as her share of that portion: the fourth died above twenty-one before his father; who survived his wife, and died without any farther appointment: Held, that £3000 was well appointed, and that the remainder vested in all equally according to the direction for want of appointment.

*Wilson v. Piggott.* - - - - - II. 351

Under a power to appoint among all children, if part is well appointed to some, leaving a share not illusory, which is afterwards appointed so as entirely to exclude one, the last appointment only is void. - - -

II. 355

Personal estate settled on marriage for the husband for life, then for the wife for life, then to and among all and every the children and grand-children or issue, in such shares, under such restrictions, at such times, and in such manner as they or the survivor should appoint by deed or deeds or will; for want of appointment, to all and every the children and grand-children or issue living at the decease of the survivor, equally, payable at twenty-one or marriage; if but one, to that one; provided that in case of no appointment the issue of any children dead should not have a greater share than their parents would have had: issue only are within the power; but in any degree: but an appointment to any issue not living must be restrained to twenty-one years after lives in being at the creation of the power; otherwise it is void, even as to such as come *in esse* within those limits: but on marriage of a daughter, interests may be given to her children generally and to the husband. What is ill appointed goes as in default of appointment: but children of a living parent cannot take under the proviso. *Routledge v. Dorril.* - - -

II. 357

. The doctrine of *cy pres* does not apply to personal estate: therefore where under a power to appoint personal estate to children or issue, an appointment is made to a son for life, then among all his children; if none, to him, his executors, &c. the limitation to his children being void, because not restrained within the legal bounds, cannot be made good *cy pres.* *Routledge v. Dorril.* - - - - -

II. 357

. Preceding limitations under an appointment being void, subsequent limitations, though within the power, cannot be accelerated; and are void also; though the objects of the prior limitations never come *in esse.* *Routledge v. Dorril.* - - - - -

II. 357

13. Where real estate is under a power of appointment limited in strict settlement, if the children cannot take as purchasers, the intention shall be executed *cy pres* by construing it an estate tail. - - - - -
14. Under marriage articles £15,000 was vested in trustees on trust, together with £5000, covenanted by the husband to be paid, to be laid out in land to be settled upon the husband for life; remainder to the wife for life; remainder to the use of such child and children, in such shares, for such estates, and subject to such powers, limitations, and provisions, as the husband and wife or the survivor should appoint; in default of appointment, to the children in tail; in default of issue, to the husband in fee. The husband and wife joined in a direction to the trustees, reciting their resolution to invest the trust fund in an estate lately purchased by the husband for £16,300, and directing them to deliver the said stock, &c. to him at the price they were at on the day of the purchase; which was done. The wife died. There were two daughters. The father by Will, reciting the purchase, and that he had not conveyed it to the uses of the settlement, and that it was not his intention, that the said purchase should be an investment of the trust fund, but that the said fund, with its increase, should be taken out of his personal estate, gave £10,000, part of the trust fund, in trust to be laid out in land to be conveyed to one daughter for her life, for her separate use; remainder to her children in tail; remainder to the other daughter in fee, for whom he also appointed the residue of the fund; but revoked that by codicil, reciting a portion given on her marriage. Held, 1st, that grand-children are not objects of the power; but the excess only would be void: 2dly, the fund, with its increase, was invested in the purchase: 3dly, there was no appointment of the estate or money due on the covenant: 4thly, the remainders in default of appointment are vested subject to be divested by appointment; and will take effect as to what is ill appointed or unappointed: 5thly, the share of the daughter, to whom the portion was advanced on marriage, was thereby satisfied. *Smith v. Lord Camelford*. - - - - -
15. Father, having power to appoint among children, and purchasing the share of one, cannot by appointment entitle himself to more than the share of that child in default of appointment. - - - - -
16. A power of appointment not executed by a general disposition by Will. *Croft v. Slee*. - - - - -
17. Appointment by father and son under a power of money, charged on an estate, that, in case the son should survive, it should be applied by him in and towards the payment of the debts of the father; and subject thereto

II. 3

II. 6

II. 7

IV. 6

the residue, if any, should go and be paid by him, his executors, &c. in and towards satisfaction of his debts, with a similar provision as to the residue. The father surviving appointed in favour of another son, for valuable consideration as to part. As to that the decree directed payment under the appointment; the residue to be paid into Court, with liberty to apply; in case of no application within twelve months to be paid according to the appointment. *Lady Clinton v. Lord Robert Seymour.* - - - - -

IV. 440

A. having both a power and an interest, the estate being conveyed to such uses as he should appoint, and, in default of appointment, to him in fee, conveys by lease and release, using also words of appointment: the deed operates as a conveyance of his interest, not as an execution of his power; especially if the effect of the latter construction will defeat the object. *Cox v. Chamberlain.*

IV. 631

An appointment exceeding the power by a limitation to objects not within the power is void as to the excess; as, where the power is to appoint to children, and the appointment is to a child for life, and after his decease to his wife and children: but that void limitation shall not defeat a limitation over to an object of the power, in case such child dies without leaving a wife or child surviving. *Crompe v. Barrow.* - - - - -

IV. 681

Trust in marriage articles to pay certain funds, the property of the wife, to all and every her child and children in such parts, shares, and proportions, as she should by will give, &c. and, for want of such gift, &c. to all and every her child and children part and share alike, and for want of such issue, over. By her Will she gave ten guineas, part of the fund, to her eldest son; declaring, that he was otherwise provided for by the Will of his uncle; and the remainder she gave to all her other children, naming them, equally, with survivorship in case of the death of any during minority, and before receipt of his, her, or their shares; and in case of the death of her eldest son before he comes to the possession of his uncle's fortune she gave her second son only ten guineas. The only provision of the eldest son was a remainder in tail after the life estate of his father; who survived his wife. The Court was of opinion, 1st, that children illegitimate, being born after elopement, and no access, clearly could not take: 2dly, that the share appointed to a child, who died in the life of her mother, lapsed: but the case was determined upon the third point; that under the circumstances the appointment of ten guineas was illusory; and therefore the whole was void, and the fund was distributed among the surviving children and the representatives of the deceased child; the interest vesting on the birth, liable

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to be divested only by appointment. <i>Vanderzee v. Aclom.</i> - - - - -	IV.	771
21. Under a power to appoint to and among several persons each of the objects must have a part: but a Court of Law will not enter into the amount of the share appointed. - - - - -	IV.	785
22. In equity an appointment of a very small share is not illusory, if justified by circumstances; as where that object is otherwise provided for. - - - - -	IV.	785
23. Voluntary bond to pay to and among all such child or children of <i>A.</i> in such parts, &c. as the obligor should by deed or will appoint; and for want of appointment, and as to what should be unappointed, to and among all such child or children of <i>A.</i> as might survive the obligor. Appointment by will of the whole fund to one of six children established. <i>Wollen v. Tanner.</i> -	V.	218
24. Appointment, giving very small shares to some of the objects, set aside, as illusory. <i>Spencer v. Spencer.</i> -	V.	362
25. The rule as to illusory appointments not to be applied, where a sufficient reason appears upon the face of the appointment: perhaps not, between parent and child, if clearly proved. - - - - -	V.	363
26. An appointment by a father not illusory, where he gives other provisions to the object excluded. <i>Long v. Long.</i>	V.	445
27. Power of appointment among three persons executed by a transfer of one-third to one under an order on petition; stating, that the person having the power was desirous, that the fund might be equally divided. That person dying without any farther execution, the Court gave the two remaining thirds respectively to another of the objects and to the administratrix of the third; who was dead; but had survived the person executing the power. <i>Fortescue v. Gregor.</i> - - - - -	V.	553
28. Devise in trust to dispose of the premises unto and amongst the devisee's four children, in such manner, shares, &c. as he should by deed or will appoint: one dying in the life of his father, before appointment, was held entitled to a fourth ( <i>a</i> ); the father, after that child's death, having appointed three-fourths to his three surviving children respectively. <i>Reade v. Reade.</i>	V.	744
29. Power of appointment does not prevent the interest vesting, subject to be divested. - - - - -	V.	748
30. Difference between land and money subject to a power of appointment. - - - - -	V.	749
31. Under a power to appoint among several objects each must have a share, and, by the rule in equity as to illusory appointments, a substantial share; unless a good reason appears; as, another provision by the person		

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(\*) See the note, Vol. V. page 750.



- executing the power, not from any other quarter. Under such a power, an appointment of a fund, nearly £1900, among three children, the objects, £10 to one, £50 to another, and the remainder to the third, all having other provisions *aliunde*, was set aside as illusory. *Kemp v. Kemp*. - - - - - V. 849
- Power to appoint to the use of such child and children, &c. an appointment to one or more good. - - - - - V. 857
- Not now the rule, that under a power to appoint among several objects they must take equally, unless a good reason appears. - - - - - V. 859
- A power to appoint among several objects well executed at law by giving each a share, however small. - - - - - V. 861
- Testatrix gave a fund, over which she had a power of appointment, and some specific articles, to trustees, in trust for her "residuary legatee hereinafter named:" and gave the general residue to *A*. By a codicil she revoked the bequest of the residue; and gave it to *A*. and *B*.—*A*. was held solely entitled to the fund under the appointment. Affirmed on appeal. *Roach v. Haynes*. - - - - - VI. 153. VIII. 584
- Power of appointing real estate well executed by a devise to trustees to sell, and an appointment of the money produced by the sale. *Kenworthy v. Bate*. - - - - - VI. 793
- Settlement upon such child or children as the father should appoint: appointment, excluding one, established. *Kenworthy v. Bate*. - - - - - VI. 793
- Power to appoint land well executed by a charge. - - - - - VI. 797
- Bequest to executors in trust that they shall pay, &c. unto and amongst the testator's two brothers and his sister, or their children, in such shares, &c. and at such times, &c. as the trustees, or the major part or the survivor, his executors, &c. shall think proper. All the children living at the death of the testator held entitled with the parents, *per capita*: the Court not having a discretion. *Longmore v. Broom*. - - - - - VII. 124
- Bequest to *A*. or *B*. void for uncertainty: if at the discretion of *C*. good. - - - - - VII. 128
- Settlement in pursuance of articles, previous to marriage, to convey to the use of the husband for life; remainder to wife for life; remainder upon trust to convey unto and amongst all and every or any of the children in such parts and proportions, &c. as the husband and wife or the survivor should by deed or writing with or without power of revocation, or by Will appoint: in default of appointment, to the first and other sons in tail male: remainder, subject to trusts that failed, to the heirs of the husband. A joint appointment by deed, subject to a proviso for revocation and re-appointment by the husband and wife and the survivor, well revoked by the wife surviving; and by the same deed a re-appointment



to the daughter and two sons successively for life, with remainders in tail to the grand-children, and the ultimate remainder to the daughter in fee, void for the excess beyond the power, viz. the estates to the grand-children, and the ultimate limitation upon them to the daughter; and the principle of *cy pres* not applicable; all beyond the life estates of the children therefore to go as in default of appointment. *Brudenell v. Elwes.*

VII.

42. Investment of stock directed in trust to pay the dividends to the testator's son for life; and after his death to transfer part of the capital according to his appointment: an interest for life only, with a power. *Nannock v. Horton.* - - - - -

VII.

43. Power of appointment not executed by a Will having no reference to the power or the subject of it; and the Court will not inquire into the circumstances of the property. *Nannock v. Horton.* - - - - -

VII.

44. Limitation to such uses as *A.* shall appoint; and, in default of appointment, to him in fee: the fee is in him until appointment. - - - - -

VII.

45. Bequest to such of the children of *A.* as *B.* shall by Will direct, and, in default of such direction, among the children share and share alike. *B.*'s disposition by Will in favour of the children living at her death established against the claim of one born afterwards, under the general words. *Paul v. Compton.* - - -

VIII.

46. Power of appointment by Will. The Court requires the judgment of the Ecclesiastical Court, that the instrument is testamentary; but is not satisfied with the proof in that Court; requiring the witnesses to be examined again; or, if no witnesses, proof of the signature. -

IX.

47. Appointment of £200 stock, though a very unequal proportion of the fund, held not illusory. Appointment void, as far as it exceeds the power: viz. to grand-children under a power to appoint to children. *Butcher v. Butcher.* - - - - -

IX.

48. Under a power of appointment, discretionary as to the shares, the distribution may be unequal, the inequality considerable, and no reason assigned: until it becomes such as to render some share illusory. - - -

IX.

49. Power of appointment to or among one or more younger children, in default of appointment, equally. One of two objects being removed by the effect of an express satisfaction, by way of advancement, the other takes the whole, as in the case of death, by analogy to the customs of *London* and *York.* *Folkes v. Western.* -

IX.

50. Appointment of £100 *South Sea* Annuities to one child, and £2400, the residue of the fund, to the other, those being the only objects of the power, not illusory. *Bax v. Whitbread.* (See No. 62.) - - - - -

X.

51. The execution of a power of appointment operates by

- way of limitation of a use under and by the effect of the instrument reserving the power: the fee vesting in the mean time. - - - - - X. 255
- . The execution of a power of appointment operates as a limitation of a use, attaching upon the seisin in the feoffees, &c. under the old instrument. - - - - - X. 264
- . Power of appointment does not prevent the fee vesting, subject to be divested by execution of the power. Such a power is a mode, which the owner of the estate reserves to himself, or gives to another, through the medium of the Statute of Uses, of raising and passing an estate. - - - - - X. 265
- . Appointment by Will among children under a power to the father. A share, lapsed by the death of one in his life, goes among all, as in default of appointment; notwithstanding a direction, that each receiving a share should release the fund. No presumption of satisfaction or purchase from another provision, being expressly in satisfaction of a different interest. *Burges v. Mawbey*. - - - - - X. 319
- . Appointment of £100, out of £2500, viz. to two children, one-third each; the remaining third to the children of another child (the power extending to their issue), and £2400 equally to two children, the only other objects, established: the Court refusing to go farther against an appointment, as illusory, than actual decision. *Mocatta v. Lousada*. - - - - - XII. 123
- . Appointment of £5500 to one child, £1100 to another, and £500 among the others, seven in number, held not illusory: the Court refusing to go farther upon that subject than actual decision. *Dyke v. Silvester*. - - - - - XII. 126
- . Power of appointment not executed by general words in a Will, "all my personal estate," &c. and "all my estate and interest therein." *Bradley v. Westcott*. - - - - - XIII. 445
- . Power of appointment not executed by appointing an executor. - - - - - XIII. 452
- . Distinction, though slight, established between gifts for life, and indefinitely, with power of disposition. The latter vests the property without appointment: the former requires appointment. - - - - - XIII. 453
- . Settlement by a *feme sole*, in contemplation of marriage, of part of her fortune in trust to pay the dividends to herself for her separate use for life, and after her death for her intended husband; and after the death of the survivor to transfer the capital according to her appointment by Will; and in case she should die without appointment, and he should be then dead, in trust for her next of kin, their executors, &c. according to the Statute of Distributions. An interest for life only in the widow, with a power of disposition by Will. *Anderson v. Dawson*. - - - - - XV. 532

61. Equitable jurisdiction upon illusory appointment; discretionary according to the circumstances. *Bax v. Whitbread.* - - - - - XVI.
62. Execution of a power of appointment among children and grand-children, by giving £100 to one, and £2400, the residue of the fund to the only other object, established under the circumstances: the former being, at the time of appointment, an uncertificated bankrupt; and other interests being given to him and his family by the instruments, creating and executing the power. *Bax v. Whitbread.* (See No. 50.) - - - - - XVI.

OF ATTORNEY.—1. For valuable consideration not revocable.

1. Power of attorney revocable; and in ordinary cases would not found the jurisdiction for delivering up instruments: but, where executed for valuable consideration, this Court would not permit it to be revoked. - - - II.

See *Assets* 42. *Bankrupt* (Power 1.) *Baron and Feme* 13. (*Separate Property*.) *Charge* 1. *Charity* 5. 13. *Contract* 72. *Deed* 8. *Devise* 7. (*Revocation* 1. 2.) *Dower* 8. *Ecclesiastical Court* 1. *Evidence* 48. (*Presumption* 9.) *Implication* 2. *Partition* 10. *Practice* 28. *Principal and Agent* 5. 6. 32. *Revocation* 22. *Tenant in Common* 3. *Trust* 113. 121. *Vendor and Vendee* 20. *Vesting* 59. *Voluntary Settlement, &c.* 2. 6. *Will* 21. 73. 115. 116. 119. 179. 180. 301.

### PRACTICE.

1. One not bound by another's defence.
2. Damages reduced on second trial: Effect as to costs.
3. Revival of Injunction, dissolved on merits, until answer to amendments refused.
4. The Court will not keep money, after the right established, even on request.
5. Two day's notice for re-hearing.
6. Accountant-General to receive payment under Act of Parliament without an order.
7. Administrator brought in by motion after decree passed, &c. only to witness; not to pay.
8. } Certificate by the Master before Report. Order on it
9. } refused; but not taken off the file.
10. Separate Report; and proceedings *de die in diem*.
11. Question of intention for the Court, not the Master.
12. } Second answer pending exceptions: at any time before
13. } order to amend, &c.
14. Election to sue, &c. a motion of course.
15. Order to prevent removing timber wrongfully cut.
16. Decretal order not discharged on motion.
17. Purchaser not compelled to appoint a Clerk in Court: necessary only where the party is to appear.
18. Bill not dismissed on motion without costs on the ground that the Court would decree according to it, without consent.

19. Whether information, &c. that the person served acts as Clerk in Court, sufficient.
20. Consent to examine a plaintiff being refused, amendment by making him a defendant, withdrawing replication, on terms.
21. From an error in the decree the parties unable to proceed under it: Petition to set down for farther directions dismissed.
22. Deeds not delivered up on petition in bankruptcy.
23. Order on motion, affecting plaintiff's title, refused without consent.
24. Waiver of relief must be on the record.
25. Bill amended after answer considered as original.
26. Cross bill for legal title dismissed with costs.
27. General rule not broken through for inconvenience.
28. No bill under power of appointing the application of a charity.
29. New *subpœnas* not necessary on amended bill.
30. Amended bill as new for certain purposes.
31. Argument by leave on motion to vary minutes.
32. Mere want of title in vendor not the subject of a cross bill.
33. Report to state the shares of an uncertain sum, to be distributed, in *aliquot* parts, not money.
34. Award on general reference impeached by cross motions, not Exceptions.
35. Amendments moved should be stated.
36. Court not bound to notice privileges under charters confirmed by private statutes, though declared public.
37. For security for costs plaintiff must be resident abroad: then of course.
38. Witness re-examined after decree.
39. Impertinent interrogatories suppressed.
40. Plaintiff in injunction cause, defective in parties at the hearing, ordered to speed: but Injunction not dissolved: nor a Receiver without a special case of waste.
41. Plaintiff cannot dismiss without costs: nor, after refusal, with costs without consent.
42. New plaintiff by supplement may impeach a decree on re-hearing by former parties.
43. Dismissal with costs against defendant examined as a witness.
44. Interest refused; not being prayed.
45. } Affidavits against answer in support of Injunction on
46. } merits.
47. Plea allowed with costs on default of plaintiff, having amended, after it was set down.
48. Amended bill out of Court by subsequent allowance of plea.
49. Motion after plea, &c. to amend on 20s. costs, must state, that it is not set down.
50. Appointment of Receiver in the Master's discretion.
51. Biddings opened for benefit of the suitor and estate, not the purchaser.

52. Generally 40s. costs on dismissal on bill and answer.
53. Plea of another suit, &c. referred of course.
54. Will not executed partially.
55. Party discharged, as well as charged, by his own examination.
56. Interest under a general reservation of farther directions.
57. Wife's money not paid to husband without affidavit, that there is no settlement.
58. General order as to Receiver's accounts.
59. { Biddings opened after Report confirmed. Not on increase alone. Fraud an exception to the general rule.
60. {
61. Courts of law depart from general rules of practice on general principles.
62. Amendment of plea.
63. Master's judgment conclusive in appointing Receiver ; unless a substantial objection.
64. Any creditor may prosecute a decree for an account.
65. Compulsory appearance of defendant outlawed, though abroad two years.
66. { Time to answer after insufficient answer. Costs of attachments.
67. {
68. No specific direction in the reference of purchaser's costs on opening biddings for a particular expense.
69. No proceedings after general demurrer: Defendant cannot dismiss.
70. Creditor may recover, though not declaring on a note.
71. When supplemental bill unnecessary.
72. Imprisonment of husband not a ground for separate answer.
73. Purchaser not compelled to complete his purchase before Report absolutely confirmed.
74. Service on Clerks in Court of dispersed defendants to confirm the Report.
75. Answer, stating purchase for value without notice, not required to go farther.
76. { Booksellers, taking spurious copies, must be sued separately: so on a patent: distinction as to a fishery, &c.
77. {
78. Advance on opening biddings.
79. Deed between husband and wife as to separate property not established without her presence in Court.
80. Plea of former suit depending struck out: but no reference within a month: Bill dismissed.
81. Master's appointment of consignee conclusive, unless a special and strong case.
82. One witness cannot prevail against a positive denial.
83. Exception over-ruled with costs.
84. Reference of title on motion after answer.
85. Relief against forfeiture of deposit.
86. Examination under commission of the *American Government* held sufficient.
87. Decree *pro confesso* on motion, where only one defendant.

- 88. } No decree or judgment against title of the Crown on
- 89. } the record, though not insisted on.
- 90. Defendant under sentence for felony not brought up for want of answer.
- 91. Master's appointment of Receiver conclusive without a special case.
- 92. Balance ordered in on motion.
- 93. Exception to Master's appointment of Receiver disallowed.
- 94. Right of the Six Clerks to their proportion of the fee from the Sworn Clerk; though he has given credit.
- 95. }
- 96. } Examination after decree by the Master.
- 97. }
- 98. No *subpœna* to amended bill.
- 99. Affidavit of merits for service of *subpœna* on attorney of defendant abroad.
- 100. } Abatement by plaintiff's insolvency pending account:
- 101. } whether at law on his bankruptcy.
- 102. Decree not impeachable collaterally in another cause.
- 103. Exceptions after order to confirm *nisi* no cause against making it absolute; unless ordered to be set down.
- 104. }
- 105. } Decree *pro confesso* generally on amendments not answered: Not prevented by insufficient answer.
- 106. }
- 107. Costs on bill to secure legacy to infant.
- 108. No Injunction for executor against creditor before decree.
- 109. Reference on piracy of copyright.
- 110. Detainer under illegal arrest discharged.
- 111. Advance on opening biddings.
- 112. Outlawry common process in *Ireland*.
- 113. Costs of discovery.
- 114. Issue instead of reference on a doubtful figure in a legacy.
- 115. Case, stated as a trust, refused by the *King's Bench*.
- 116. To decree *pro confesso* under the statute, affidavit required, that defendant had been in *England* within two years.
- 117. Discharge from illegal arrest and detainer.
- 118. Order on admission of assets with offer of appropriation for a contingent legacy.
- 119. Advance on opening biddings.
- 120. Time for excepting on bill for discovery only.
- 121. To decree *pro confesso* affidavit required, that defendant had been in *England* within two years.
- 122. Service of sequestration on Clerk in Court, after personal service tried in vain.
- 123. Injunction in pressing cases on petition and affidavit.
- 124. Commitment for breach of Injunction on service on defendant's wife.
- 125. Service of *subpœna* under cover to one, to whom defendant ordered his letters to be sent.
- 126. Advance on opening biddings.
- 127. Payment to executor without prerogative probate.

128. Depositions not amended after publication.
129. } Whether in revivor a new *subpœna* to hear judgment:
130. } in the *House of Lords* no fresh summons.
131. Proceedings *de die in diem* without an order.
132. Plaintiff may except to Report; and set down for farther directions.
133. Re-hearing of decree not signed, &c. for error.
134. Bill, the object disapproved, taken off the file for want of counsel's signature.
135. At the last Seal after *Trinity* Term cause against dissolving Injunction limited to the Petition-days.
136. Case, stated as a trust, refused by the *King's Bench*.
137. Biddings opened for one present at the sale.
138. Reference for scandal, not for impertinence after order for time.
139. Time on Commission for defendant's examination left to the Master.
140. No security for costs on the fact that defendant is gone abroad.
141. Time to answer till payment of costs of demurrer allowed to a bill in the *Exchequer* to the same effect, without prejudice to motion to dismiss.
142. Appeal to the Chancellor of the Duchy of *Lancaster* from dismissal by the *Vice Chancellor*, affirmed on re-hearing.
143. Dismission on objection to title without reference.
144. Relief under the general prayer.
145. No decree against the answer on one witness, not supported.
146. Production of original Will at the hearing on security.
147. After two insufficient answers six weeks refused.
148. Plaintiff's name struck out on security for costs.
149. Notice of Motion on *Saturday* for *Tuesday*.
150. Service of *subpœna* on Clerk in Court or Solicitor on circumstances.
151. Answer ordered to be received, though not signed.
152. Exceptions to Report dispensed with.
153. Party compellable to produce papers connected with the relief.
154. Answer ordered to be received, though not signed.
155. } Plaintiff for relief as well as discovery not aided in
156. } proceeding at law except by decree.
157. Infant never ordered out of the jurisdiction.
158. Exception for costs.
159. Order for letting infant's estate, being small, without reference.
160. Maintenance for the time past.
161. At law affidavits filed a certain time before the discussion: otherwise in equity.
162. Order for sale without a reference refused.
163. Maintenance for the time past.
164. } Reference for impertinence waved by reference for in-
165. } sufficiency: after which no reference for imperti-
- } nence.



166. Exceptions to settled interrogatories : not petition, as an objection to a Receiver.
167. } For breach of Injunction, restraining personal service of
168. } motion, that defendant shall stand committed : when
169. } an act is to be done, he has the option to do it by a
170. } particular day.
171. Purchaser not substituted without affidavit of no underbargain.
172. Examination *de bene esse* of witness above seventy on new trial suggested.
173. Report, stating circumstances without the conclusion, referred back.
174. Security for costs not required, when co-plaintiffs are resident in *England*.
175. Purchaser not substituted without affidavit of no underbargain.
176. Title not determined without a reference, unless unequivocally waved.
177. Payment into Court before answer on gross fraud.
178. Injunction in Vacation.
179. Injunction against judgment refused before answer.
180. Production of original Will at the hearing on security.
181. Time for exceptions *nunc pro tunc*.
182. Decree against one trustee for debts : the other not appearing under sequestration.
183. Order to amend, not drawn up, does not prevent dismissal for want of prosecution.
184. Messenger on return "*Cepi corpus*," not capable of being removed.
185. Ward married : proceedings stayed till husband appears.
186. } *French* depositions not delivered out for translation.
187. } As to the jurisdiction to order original Will to be delivered out.
188. } Omission in decree of course supplied on motion.
189. } Commission abroad without stating the points or witnesses.
190. } Prerogative probate ; though the sum small.
191. } Inspection of letters referred to as exhibits refused.
192. } No evidence after Report settled.
193. } Examination *de bene esse* except in certain cases requires notice.
194. } Affidavit, that cannot be answered, is in time the day before the motion.
195. } Payment into Court on affidavit of an Accountant refused : ordered on admission.
196. } Costs of discovery not till Commission returned : no
197. } costs if defendant examines in chief.
198. Receiver, when on the answer the real estate must be liable.
199. Answer not taken off the file for mistake : but additional answer permitted.
200. Construction of General Order 1794, as to time for answering, in the case of a Peer.
201. Payment into Court must be on admission.

- 202. Defendants not bound as to their rights with respect to each other, unless called on to contend.
- 203. Service of *subpoena* on infant's father-in-law good.
- 204. Production of instrument only on admitted possession, &c.
- 205. Decree *pro confesso* pronounced by the Court.
- 206. On re-sale at an advance no costs to the person, who opened the biddings, not being the purchaser.
- 207. Sequestration for not performing the decree.
- 208. Second Commission.
- 209. Costs on notice of motion abandoned.
- 210. Service of Writ of Execution.
- 211. Joint Order for costs enforced against one; the other absconding.
- 212. Attachment not without previous affidavit.
- 213. Payment into Court to be not forthwith; but a day must be named.
- 214. Private Letter to the *Lord Chancellor* on a cause.
- 215. Denial of combination does not satisfy the undertaking not to demur alone.
- 216. Appeal from a re-hearing at the *Rolls*.
- 217. General Order 1794 as to time to answer.
- 218. Messenger after Attachment for want of infant's answer.
- 219. Power to the Master to examine not now in the decree; as in the Exchequer: but Commission of course on his certificate.
- 220. Re-hearing on terms after decree by default made absolute.
- 221. Costs on re-hearing.
- 222. Party not heard, until contempt cleared.
- 223. Time to be obtained on affidavit, not by an evasive answer.
- 224. Insufficient answer satisfies the condition not to demur alone.
- 225. Motion to sell under sequestration on notice.
- 226. After plea bill amended, paying costs, not within the General Order 1794.
- 227. Amendment merely to add a defendant, does not prevent exceptions.
- 228. Receiver in possession, no Ejectment without leave.
- (a)
- 230. Reference removed on the age, &c. of the Master.
- 231. Account after assets admitted by mistake.
- 232. Judgment; though one defendant dead.
- 233. Special jurisdiction under Act of Parliament must be strictly followed.
- 234. Exception before the *Chancellor* to Report under decree at the *Rolls*.
- 235. Order to speed by one defendant: the other in contempt.
- 236. Undertaking to speed compelled, notwithstanding defendant's bankruptcy.
- 237. Appeal withdrawn on consent.

- 238. On decree by default evidence not entered as read.
- 239. No costs on abatement by marriage of female plaintiff after answer to Bill of Discovery.
- 240. Guardian for infant defendant on plaintiff's motion.
- 241. Exceptions amended on mistake.
- 242. Supplemental answer on mistake.
- 243. } Security for costs not after order for time ; nor at law
- 244. } after any step.
- 245. Supplemental answer on mistake, with affidavit.
- 246. Motion on certificate of the Master of no examination, or the Six Clerk of no proceeding.
- 247. After decree revivor by defendant or his representative.
- 248. Order for time to answer does not generally authorize answer and demurrer: expunged or over-ruled.
- 249. Denial of combination not a compliance with the order not to demur alone.
- 250. } Trial not staid in the first instance. Injunction in *Chan-*
- 251. } *cery* before Declaration stays all ; after, only exe-
- 252. } cution.
- 252. By ancient order Injunction obtained in open Court only.
- 253. Reference of title on motion.
- 254. Sequestration for want of answer *nisi* in the first instance.
- 255. } New trial of issue from the *Rolls* moved before the
- 256. } *Chancellor*: so farther directions, &c. in either Court ;
- 257. } though not there originally.
- 257. In the Courts of law on affidavit for bail different.
- 258. Grounds for opening biddings after Report confirmed.
- 259. Discharging order to take the bill *pro confesso* ; offering to answer.
- 260. Execution of decree for compound interest with half-yearly rests.
- 261. Contempt discharged immediately on farther answer until fourth insufficient; though costs not accepted.
- 262. After decree merely for inquiries order on motion with consent.
- 263. Sheriff ordered to pay the party under attachment for costs.
- 264. Transfer to one legatee, having attained the age.
- 265. Old on revivor by *sci. fa.*
- 266. Taxation by a party under the general jurisdiction: by a stranger under the Statute. Waver.
- 267. Order to proceed *de die in diem* necessary: but not imperative.
- 268. Purchase before the Master not complete before Report confirmed.
- 269. Infant plaintiff struck out, to be made defendant.
- 270. Guardian for infant defendant, abroad, to answer not on motion.
- 271. Under the order to answer amendments and Exceptions together new Exceptions confined to the amendments; but to be considered with reference to the original bill.

- 272. No addition to Exceptions after answer : but it may be referred back.
- 273. Exceptions answered, before order to amend, &c. drawn up, regular.
- 274. Security for costs by plaintiff abroad not increased except by way of terms for some favour.
- 275. Right to notice not affected by postponing motion.
- 276. Loss of decree supplied from office copy ; and entered *nunc pro tunc*.
- 277. After decree no dismissal by consent : but arrangement on farther directions.
- 278. Creditors let in after the time elapsed.
- 279. The only answer to motion to dismiss for want of prosecution is undertaking to speed.
- 280. Party avoiding service ; and the Clerk in court dead.
- 281. Reference of title on motion limited to disputed title.
- 282. Order to pay dividends to trustees or one.
- 283. Special order for time to answer in the first instance.
- 284. Answer ordered without oath and signature.
- 285. General Exception to Report, referred back, over-ruled with costs beyond the deposit, though regular.
- 286. Depositions referred for scandal without notice.
- 287. Witness refusing to be sworn ordered to attend, or stand committed.
- 288. } Personal service for contempt dispensed with.
- 289. }
- 290. After order for payment, first Attachment ; then commitment.
- 291. Master not ordered to certify, whether he is satisfied with the production.
- 292. Examination to credit only by special order.
- 293. } Clear mistake in decree rectified on motion with consent.
- 294. }
- 295. Order to dismiss, &c. though the Six-Clerk's certificate subsequent.
- 296. Co-plaintiff, as next friend, struck out on security for costs.
- 297. Exceptions pending demurrer to discovery admit the demurrer. Withdrawn on costs.
- 298. Record, defaced by amendments, taken off the file.
- 299. Plaintiff may dismiss as to himself without co-plaintiff's consent.
- 300. Witness re-examined before the Master on different interrogatories.
- 301. Distinction between motion and petition.
- 302. Money not paid out on motion.
- 303. No addition or alteration of decree on motion, &c.
- 304. Execution of decree for compound interest with half-yearly rests.
- 305. } The only answer to motion to dismiss for want of prosecution is the undertaking to speed ; unless special
- 306. } ground ; as on a peremptory undertaking at law to go to trial.
- 307. Depositions not suppressed.
- 308. Decree *pro confesso* not to be impeached collaterally.

- 309. Previous application to the attorney at law not necessary for an order, that service on him shall be good.
- 310. Account not decreed on motion.
- 311. Costs of notice of motion abandoned.
- 312. { Biddings not opened on mere negligence, &c. without
- 313. { something unconscientious. No rule for advance of
- £10 *per cent.*
- 314. Answer of trustee in a state of incapacity taken by guardian.
- 315. Payment into Court on plaintiff's calculation of defendant's schedule, not admitted, refused.
- 316. Before a serjeant at arms under order to bring in books, &c. a subsequent order on the Master's certificate required.
- 317. Writ of execution only in case of a party. Distinction as to a stranger.
- 318. Order to amend on petition at the *Rolls* after notice of motion to dismiss for that day; on which the motion could not be made.
- 319. Production of deeds, &c. referred to, but not described, or offered, refused.
- 320. Qualified submission to produce deeds, if required by the Court.
- 321. Order to dismiss for want of prosecution, irregular through plaintiff's misrepresentation, discharged with costs against him.
- 322. On conduct of administratrix inquiry as to balances from time to time, with interest.
- 323. Commitment of purchaser disobeying order to pay.
- 324. Security for costs by plaintiff gone to reside in *the Isle of Man*.
- 325. General appeal does not stay the decree: if for specific performance, execution only suspended.
- 326. Order of preceding *Chancellor* not re-heard on minutes.
- 327. Plea to bill amended after Exceptions allowed.
- 328. Acceptance of answer waves contempt, except as to costs.
- 329. Order obtained by defendant by consent for plaintiff's examination, saving just exceptions.
- 330. As to farther proceeding after remanding defendant, under criminal sentence, brought up by *Habeas corpus* for not putting in answer.
- 331. Injunction of course to deliver possession; as a ground for the writ of assistance.
- 332. Dismission for want of prosecution after three terms of course.
- 333. After answer to discovery liberty to add a prayer for relief refused with costs.
- 334. Plaintiff for discovery pays the costs.
- 335. Distinction as to Exceptions in *Chancery* and *Exchequer*.
- 336. Production ordered on answer, admitting possession of a Will and title under it.
- 337. Order on petition without suit for a person to act as guardian, &c. living the father.
- 338. Enlarging publication until answer to cross bill.

- 339. Order to amend after undertaking to speed discharged.
- 340. Dismission for want of prosecution before Replication of course.
- 341. Enlarging publication until answer to cross bill.
- 342. Bidding opened on a second application by the same person.
- 343. Dismission for want of prosecution before replication of course.
- 344. Order by one defendant to examine another not of course after decree.
- 345. Different affidavits in the Courts of Law to put off trial.
- 346. Serjeant at arms on submission to Exceptions after the previous process, but no farther answer.
- 347. Discharge immediate on answer.
- 348. Member of Parliament refusing appearance.
- 349. Deposit of deeds on motion refused without a special case.
- 350. Construction of the Order 1794, as to time to answer.
- 351. Setting down without *subpœna* for judgment, &c. served not a compliance with the undertaking to speed.
- 352. Reference on two suits obtained by plea, not motion.
- 353. Petition, failing as to the principal objects, dismissed.
- 354. Reference of title on motion.
- 355. Charges of sale under just allowances.
- 356. Immediate discharge on examination put in: but, if insufficient, proceedings from the last process.
- 357. Money ordered out of Court after dismission.
- 358. Costs of motion not given, unless on notice.
- 359. Demurrer and answer, after the third peremptory order, taken off the file.
- 360. Service on attorney of defendant abroad only to compel appearance.
- 361. Order by plaintiff for answer without oath, &c., of course without consent, unless defendant abroad.
- 362. Issue, whether instrument obtained by fraud, not on motion after answer.
- 363. Attachment on service of *subpœna* in *Scotland*.
- 364. Examination, saving just exceptions, refused, when an interest appeared.
- 365. Service of *subpœna* to hear, &c. necessary; though cause set down on undertaking to speed.
- 366. Order on peremptory undertaking to speed *nunc pro tunc* of course after above two years.
- 367. Illness an exception to rule as to time to answer on special grounds.
- 368. Interrogatories, &c. not referred for impertinence without scandal.
- 369. Farther interrogatories after examination acted on.
- 370. Payment into Court on admission by motion, before farther directions.
- 371. For commitment the person serving must have authority to receive the money.
- 372. Examination to credit after publication restrained and qualified.
- 373. Examination to credit in the country.

374. Suit in another Court, instead of re-hearing, &c. disapproved.
375. No affidavit on motion against the answer; except in waste, and as to partnership those originally filed merely as to mismanagement, &c.
376. Receiver refused on claim of partnership, not raised, till the concern was prosperous, and denied.
377. Reason of receiving the party's affidavit, as creditor.
378. Proceeding under decree for account of a joint adventure by bill on behalf of plaintiff and the others.
379. On injunction affidavits against the answer not on title, but facts: except the original one; defendant having obtained time to file affidavits.
380. *Subpoena*, served on *Sunday*, irregular.
381. } Commission abroad before answer: the suit merely for  
382. } evidence for an action. Distinction in the *Exchequer*.
383. Right to process waved.
384. Service of copy without producing the original order bad, unless waved.
385. To shew cause against decree by default, how to be set down.
386. Farther examination not permitted without an order on clear surprise.
387. Waiver of irregularity by examining without a previous state of facts.
388. After publication no farther examination without great difficulty; and generally confined.
389. Witness in chief not examined on inquiry directed without order.
390. Effect of power in decree to examine parties.
391. Interrogatories to examine parties settled by the Master: whether for witnesses.
392. Affidavits before the Master by consent.
393. Depositions before the Master not to be known by the parties, until concluded.
394. Interrogatories to examine party settled by the Master.
395. Reference of title before answer.
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1. One man not bound by the defence of another. - - I. 8
2. Upon a second verdict the same as the first, but for a less sum, the last sum recovered only, and the costs of the last trial, ordered to be paid out of money in Court upon an injunction to stay execution on the first: the costs of which are to be returned. *Waddle v. Johnson*. I. 30
3. After injunction dissolved upon the merits motion to stay trial of ejectment till full answer to the amended bill refused with costs. *Lady Markham v. Dickenson*. - I. 30
4. The Court will not keep money, after the party is entitled to it, even at his own request. *Isaac v. Gompertz*. - I. 44
5. Two days notice sufficient for a re-hearing. - - - I. 45
6. Where money is directed by an Act of Parliament to be paid to the *Accountant-General*, he is bound by the Act to receive it; and the Court will not make an Order for that purpose. *Anonymous*. - - - - I. 56



7. Administrator not brought before the Master by motion after a decree passed and entered, if any thing in it affecting him by way of order to pay: otherwise, if only to witness what is done. *Habergham v. Vincent.* - I. 68
8. Before Report Court refused to order balance of charges, allowed against defendant upon account, and the whole alleged in his discharge, to be paid into Court upon Certificate by the Master and defendant's examination before him; but also refused to take the Certificate off the file. *Fox v. Mackreth.* - - - - - I. 69
9. No Certificate by a Master as by the *Accountant-General*: but there must be a Report in order to take notice of any thing in the Master's Office (a). - - - - - I. 70
10. Motion for separate Report, and proceedings *de die in diem.* - - - - - I. 72
11. Question of intention to be determined by the Court: but not proper for the Master. *Pitt v. Lord Camelford.* - I. 83
12. Second answer may be put in pending exceptions to the first. *Knox v. Symmonds.* - - - - - I. 87
13. Second answer may be filed at any time before the order to amend, &c. even the moment exceptions are taken. I. 88
14. To put a party to election to sue at law or in equity is a motion of course. *Anonymous.* - - - - - I. 91
15. Order to prevent removal of timber wrongfully cut. *Anonymous.* - - - - - I. 93
16. Decretal order cannot be discharged upon motion; though made by consent, and surprise alleged. *Anonymous.* - I. 93
17. Court will not make purchaser appoint a Clerk in Court; which is only necessary, where the party is to appear. *Child v. Lord Abingdon.* - - - - - I. 94
18. Plaintiff cannot on motion dismiss his bill without costs, on the ground, that the Court would have decreed according to it, unless consent. *Anonymous.* - - - J. 140
19. *Quære*, whether affidavit of notice must state positively, that the person served acts as Clerk in Court; or whether upon information and belief is sufficient. *M'Cauley v. Collier.* - - - - - I. 141
20. Evidence of a plaintiff being necessary, and defendant refusing to consent to his examination, the bill on motion amended by making him a defendant; and replication withdrawn; on terms of costs, amending defendant's copy, and requiring no farther answer. *Motteux v. Mackreth.* - - - - - I. 142
21. Petition to set down cause for farther directions, or such farther order, as Court should think fit, dismissed; though the parties could not proceed; an inquiry before the Master being rendered useless by the event of a verdict upon issue directed; and farther directions

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(a) See the note.

- having been reserved till after trial and report. *Dixon v. Olmius.* - - - - - I. 153
22. Deeds not delivered up upon petition in bankruptcy. *Ex parte Poole.* - - - - - I. 160
23. Upon bill by son, committee of his father, a lunatic, to set aside a voluntary settlement by him, motion for defendant to let the house, sell the furniture, &c. and bring the whole into Court, refused; plaintiff not consenting. *Colman v. Croker.* - - - - - I. 160
24. Relief, prayed by the bill, but given up at the hearing, must be expressly waved on the record. *Dundas v. Dutens.* - - - - - I. 197
25. Bill amended after answer: costs must be paid for that; then it is considered as an original bill: plaintiff is not bound by offers in the original bill; nor defendant by submissions in his answer. - - - - - I. 210
26. Cross bill, being for a mere legal title, dismissed with costs; though the original bill was dismissed. - - - I. 213
27. General rule not broken through on account of inconvenience. - - - - - I. 234
28. Interest under power of appointing the application of a Charity not sufficient to sustain a bill. *Attorney-General v. City of London.* - - - - - I. 243
29. On amended bill it is not necessary to serve new *subpœnas* on the original defendants. *Angerstein v. Clark.* - - I. 250
30. Amended bill taken as a new bill for certain purposes. - I. 250
31. Point argued by leave of the Court on motion to vary minutes. *Perry v. Philips.* - - - - - I. 251
32. If defence to bill for specific performance of agreement for a purchase depends merely on want of title in vendor, defendant ought to rest on his answer, and not file cross bill to have it delivered up, or to prevent an action; for plaintiff cannot succeed at law. *Hilton v. Barrow.* - - I. 284
33. Where a surplus to be distributed is an uncertain sum, the Master ought to report the shares in *aliquot* parts, not in money. *Attorney-General v. Haberdashers' Company.* - - - - - I. 295
34. Award on general reference not to be impeached by Exceptions, but on cross-motions. *Knox v. Symmonds.* - I. 369
35. Amendments moved ought properly to be stated. - - - I. 388
36. Court not bound to take notice of particular privileges under charters, confirmed by private Statutes, notwithstanding a clause declaring them public Acts. - - - I. 393
37. To entitle defendant to security for costs it is not sufficient, that plaintiff appears by the bill to be out of the jurisdiction: he must appear to be resident abroad: then it is of course. *Green v. Charnock.* - - - - - I. 396
38. Witness examined before decree, but then accidentally and without fraud incompetent, on motion allowed to be generally re-examined after decree upon interrogatories, to be settled by the Master: but, if competent at first,

- second examination can be only to matter substantially different. *Sandford v. —*. - - - - - I. 398
39. Impertinent interrogatories suppressed. - - - - - I. 400
40. Injunction cause stood over at the hearing for want of parties: injunction not dissolved, nor Receiver appointed, on motion without a special case of waste: but plaintiff compelled to speed the cause. *Price v. Williams*. - - - - - I. 401
41. Plaintiff can in no case dismiss his bill without costs: with costs it is of course: but after motion to dismiss without costs refused consent is necessary. *Dixon v. Parks*. - - - - - I. 402
42. New plaintiff by supplemental bill may impeach a decree upon re-hearing on petition of former parties. *Hill v. Chapman*. - - - - - I. 405
43. Defendant examined as a witness: bill dismissed as to him with costs. *Weymouth v. Boyer*. - - - - - I. 418
44. Interest refused; because not prayed by the bill. - - - - - I. 418
45. Injunction bill charging fraud in obtaining verdict: affidavits contradicting the Answer read in support of the Injunction on the merits (a). *Isaac v. Humpage*. - - - - - I. 427
46. In ordinary cases no injunction till hearing; unless a ground for it in the Answer: but in cases of waste, patents, and irreparable mischief, it will be granted on affidavits after Answer. - - - - - I. 430
47. After Plea set down order obtained of course by plaintiff to amend the bill, and served on defendant: plaintiff not appearing, when the plea came on to be argued, it was allowed of course with costs. *Jennings v. Pearce*. - - - - - I. 447
48. Amended bill is out of Court by allowance of Plea posterior to the date of the bill; otherwise, if prior. - - - - - I. 448
49. Motion of course after Plea or Demurrer to amend the bill on twenty shillings costs must state, that the Plea or Demurrer is not set down. - - - - - I. 448
50. Appointment of Receiver is in the discretion of the Master; who need not state his reasons. To support an Exception there must be a substantial objection. *Thomas v. Dawkin*. (See Nos. 63. 81. 91. 93.) - - - - - I. 452
51. Biddings are opened for benefit of the suitor and estate; not of the purchaser; as where he was too late, and the over-bidding is small. *Anonymous*. - - - - - I. 453
52. Where a cause is heard on Bill and Answer, only forty shillings costs on dismissing the Bill; unless a special case. *Bayly v. The Corporation of Leominster*. - - - - - I. 476
53. Plea of another suit depending for the same cause referred to the Master of course without being set down. *Daniell v. Mitchell*. - - - - - I. 484
54. The Court will not execute a Will partially. - - - - - I. 498

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(a) See the note, Vol. I. page 431.

55. Party discharged, as well as charged, by his own examination. *Blount v. Burrow.* - - - - - I. 546
56. Interest decreed under a general reservation of farther directions. *Sammes v. Rickman.* - - - - - II. 36
57. Money devised to be laid out in land for a *fême covert* in tail with reversion to her in fee: she chose to have it paid to her husband: not paid without affidavit by the husband and wife, that there is no settlement. *Binford v. Bawden.* - - - - - II. 38
58. General Order, that the Master shall annually at the Second Seal after *Trinity* Term certify to the Court the state of the several Receivers' accounts in their respective offices. - - - - - II. 39
59. Biddings opened after confirmation of the Report on circumstances; as where the owner of the estate, who joined in the motion, was in prison at the time of the confirmation, and a fourth of the original price was offered in advance: but a deposit of the whole advance was required. Increase of price alone will not do: but, when large, it is a strong auxiliary circumstance (a). *Watson v. Birch.* - - - - - II. 51
60. Fraud is an exception to the general rule not to open biddings after confirmation of the Report. - - - - - II. 55
61. Courts of Law will depart from general rules of practice on general principles; as where a prisoner is excused for not coming in the first instance to set aside a judgment. - - - - - II. 55
62. Not usual to refuse leave to amend a Plea: but defendant must be tied down to a very short time; and, where it seemed incapable of amendment, he had leave to withdraw and plead *de novo* in a fortnight. *Nobkissen v. Hastings.* - - - - - II. 85
63. The Master's judgment is conclusive in appointing a Receiver, unless some substantial objection is shewn. *Garland v. Garland.* (See Nos. 50. 81. 91. 93.) - - - - - II. 137
64. Any creditor may obtain an order for prosecuting a decree for an account. - - - - - II. 165
65. Defendant being outlawed, motion, that he might appear within a limited time upon the equity of the statute 5 Geo. 2. c. 25, granted; though he had not been in the kingdom for two years before the *Subpœna* (b). *Clarke v. Wright.* (See Nos. 116. 121.) - - - - - II. 188
66. The Court condemned the practice of allowing as much time of course after an insufficient answer as on the original answer; also as to the costs of Attachments; and proposed a remedy by order (c). *Anonymous.* - - - - - II. 270

(a) See the note, Vol. II. page 55.

(b) See the note, Vol. II. page 188.

(c) See the note, Vol. II. page 270.

67. At the *Rolls* after insufficient Answer an order for time is obtained on petition; and defendant never gets as much as for the original Answer. - - - - II. 270
68. On opening biddings the Court in the reference of costs of the purchaser will not give a particular direction for a specific expense. *Anonymous*. - - - - II. 286
69. General Demurrer put in; but never argued; and no proceedings afterwards: the defendant cannot have the bill dismissed for want of prosecution; as he had an equal power to move. *Anonymous*. - - - - II. 287
70. Creditor by note need not declare upon it; but may recover upon the loan. - - - - II. 303
71. Bill for account of profits, made by breach of trust, and injunction to prevent recovery at law of another sum under the same circumstances: upon the Answer coming in the Injunction was dissolved; and the money paid under the Action: not necessary to charge that fact by supplemental bill. *Massey v. Davies*. - - - - II. 317
72. Motion by plaintiff for a separate Answer by a *fême covert*, because her husband was a prisoner in the *King's Bench*, refused. *Anonymous*. - - - - II. 332
73. Motion, that a person, reported best purchaser, should complete his purchase by a certain day, refused; the Report not being absolutely confirmed. *Anonymous*. - II. 353
74. After final report of costs, &c. nothing remaining but application of the fund, ordered, that service on the Clerks in Court of the defendants should be good service, in order to confirm the Report; on motion, and affidavit, that some lived in the *East and West Indies*, and others in different parts of this country, though there were only five defendants. *Jackson v. Anonymous*. - II. 417
75. Defendant, stating by Answer a purchase for valuable consideration without notice, shall not be compelled to answer farther. *Jerrard v. Saunders*. - - - - II. 454
76. The proprietor of a copyright must file separate bills against each bookseller, taking copies of a spurious edition for sale. *Dilly v. Doig*. - - - - II. 486
77. There must be separate bills upon distinct invasions of a Patent: otherwise of a right of fishery or the custom of a mill. - - - - II. 487
78. Biddings opened on advancing £100 on £800, and £200 on £1200. *Anonymous*. - - - - II. 487
79. The course is not to establish a deed between husband and wife on her separate estate without the presence of the wife in Court, where the trustees put the parties to file a bill. - - - - II. 500
80. Plea of a former suit depending for the same cause, set down by the defendant, was struck out: but the plaintiff not having procured a reference to the Master within a month, the bill was upon motion dismissed under the standing order. *Baker v. Bird*. - - - - II. 672

- The Court will not interfere with the Master's appointment of a consignee unless upon special grounds and a strong case. *Bowersbank v. Colasseau*. (See Nos. 50. 63. 91. 93.) - - - - - III. 164
- 2. A single witness cannot prevail against a positive denial by the Answer. *Lord Cranstown v. Johnston*. - - - III. 170
- 3. Exception over-ruled with costs. *Burnaby v. Griffin*. - III. 266
- 4. The bill praying an inquiry into the title and a specific performance, on the defendant's motion after answer an inquiry was directed as to the title; at what time the abstract was delivered; and whether it was sufficient: but the Court would not decide upon any matter of relief. *Moss v. Matthews*. - - - - - III. 279
- Relief against forfeiture of the deposit upon putting the other party in the same situation, as if the contract had been performed at the time agreed. *Moss v. Matthews*. III. 279
- A married woman, living in *America*, being entitled to a legacy, a Commission to examine her would have been directed; but, as she had been examined under a Commission issued by the *American* Government, that was considered sufficient. *Campbell v. French*. - - - III. 321
- Where there is only one defendant, after all the process of contempt for want of an answer the bill may be ordered to be taken *pro confesso* upon motion. *Seagrave v. Edwards*. - - - - - III. 372
- The Court cannot decree against a title in the Crown, apparent on the Record; though not insisted on at the hearing. *Barclay v. Russell*. - - - - - III. 424
- A Court of Law could not give judgment against the title of the Crown, appearing on the record. - - - III. 436
- Defendant, in confinement under sentence for felony, cannot be brought up by *Habeas corpus* upon an Attachment for want of an Answer. *Rogers v. Kirkpatrick*. III. 471. 573
- The Court will not control the Master's appointment of a Receiver without a special case. *Anonymous*. (See Nos. 50. 63. 81.) - - - - - III. 515
- Defendant on motion ordered to pay in a balance, ascertained by the Report. *Gordon v. Rothley*. - - - III. 572
- Exception to the Master's appointment of a Receiver disallowed. *Wilkins v. Williams*. (See Nos. 50. 63. 81. 91.) - - - - - III. 588
- Under the Order 18th *June*, 1668, regulating the office of the Six Clerks, they are entitled to receive their proportion of the fee from the Sworn Clerk, though he has given credit to the client. *Ex parte The Six Clerks*. - III. 589
- After a decree the Master may examine witnesses; but ought not to do so by his clerk: the same *subpœna* issues as to bring them before the Examiner; which is the same as a *subpœna* to answer, but the label expresses the purpose; upon an examination in the country the body of the writ expresses, that it is to testify. *Parkinson v. Ingram*. - - - - - III. 603



96. The decrees in the *Exchequer* always express, that the officer is to be armed with a Commission to examine witnesses, and power to direct the same to the country; so formerly in *Chancery*. - - - - - III. 607
97. After a decree, if the Master see cause for a Commission to examine witnesses in the country, he certifies, that it is necessary; and the depositions, when returned, are filed by the Six Clerks: but depositions taken before the Master are kept in their offices. - - - - - III. 607
98. *Subpœna* not necessary to an amended bill. *Skeffington v. —*. - - - - - IV. 66
99. Upon an injunction bill to stay proceedings at law, the defendant living abroad, a motion, that service of *subpœna* upon the attorney may be good service, requires an affidavit of merits. *Stephen v. Cini*. - - - - - IV. 359
100. By the insolvency of the plaintiff pending an account the suit is abated. *Williams v. Kinder*. - - - - - IV. 387
101. *Quære*, whether notwithstanding the bankruptcy of the plaintiff at law the action may not proceed, the assignees giving security for the costs. *Williams v. Kinder*. - - - - - IV. 387
102. A decree cannot be impeached collaterally in another cause. *Lady Clinton v. Lord Robert Seymour*. - - - - - IV. 440
103. After an order, confirming the Report *nisi*, filing Exceptions and making the deposit with the Register are no cause to prevent that order being made absolute; unless an order for setting down the Exceptions to be argued is obtained; which may be done either by the plaintiff or defendant. The order, confirming the Report, was discharged on payment of two guineas costs. *Gildart v. Moss*. - - - - - IV. 617
104. Where the bill is amended after Answer, if the amended bill is not answered, the plaintiff is entitled to a decree, that the bill be taken *pro confesso* generally. *Jopling v. Stuart*. - - - - - IV. 619
105. An insufficient Answer is no Answer; and therefore shall not prevent a decree to take the Bill *pro confesso*. *Turner v. Turner*. - - - - - IV. 619, a.
106. Bill amended after Answer may be taken *pro confesso* generally, not as to the amendments only; the Record being entire. *Bacon v. Griffith*. - - - - - IV. 619, a.
107. Bill by a legatee very nearly of age to secure the legacy: the costs were given out of the estate: but that will not be done in future upon a bill to secure the legacy of an infant: as under the Legacy Act, 36 Geo. 3. c. 51. s. 32, the executor may pay the legacy into Court; and the legatee, when of age, may petition for it. *Whopham v. Wingfield*. - - - - - IV. 630
108. This Court will not before a decree interpose in favour of an executor against a creditor, proceeding at law. *Rush v. Higgs*. - - - - - IV. 638
109. A work, alleged to be a piracy, referred to the Master. *— v. Leadbetter*. - - - - - IV. 681



110. A detainer, before the defendant could be discharged from an illegal arrest, as where he was returning from his examination under a Commission of bankruptcy against him, cannot be supported. *Ex parte Hawkins.* IV. 691
111. Bidding opened on advance of £50, on £380, paying the expense. £10 *per cent.* not sufficient on a small sum. *Upton v. Lord Ferrers.* - - - - - IV. 700
112. Outlawry is at this day the common process in *Ireland.* - IV. 738
113. Plaintiff pays the costs upon a bill of discovery. - - IV. 742
114. Upon a question as to the amount of a legacy from a doubt as to a figure, an Issue was directed instead of a reference to the Master. *Norman v. Morrell.* - - IV. 769
115. The Court of *King's Bench* refused to answer a case from the *Rolls*, stated as a trust. *Bayley v. Morris.* (See No. 136.) - - - - - IV. 788
116. The Master of the *Rolls* refused to make an order under the statute 5 Geo. 2. c. 2, for the purpose of having the bill taken *pro confesso*, without an affidavit, according to the 8th section, that defendant had been in *England* within two years before the *subpœna* issued. *Neale v. Norris.* (See Nos. 65. 121.) - - - V. 1
117. Plaintiff in his return from attending a motion against him in the cause was arrested; and a detainer was lodged against him in another action: he was discharged from both: the Court examining the parties personally, not by affidavit. *Bromley v. Holland.* - - - V. 2
118. Admission, that there is standing in the names of the executors upon the trusts of the Will a considerable sum in the 3 *per cents.* and offering an appropriation, was held sufficient to entitle the plaintiff, a contingent legatee, to move for that purpose; and by consent the order was made, as upon admission of assets sufficient to satisfy the plaintiff's demand, to transfer, &c. *Pullen v. Smith.* - - - - - V. 21
119. Biddings opened after the Report confirmed simply upon an advance of £61 on £305: £35 not sufficient. *Cheatham v. Grugeon.* - - - - - V. 86
120. Plaintiff in a bill for discovery only is not entitled as of course to two Terms to except to the answer filed in the Vacation. *Hewart v. Semple.* - - - - V. 86
121. To obtain an order for taking the bill *pro confesso* under the statute 5 Geo. 2. c. 25, the affidavit must state, that the defendant has been in *England* within two years before the *subpœna.* *Bishop of Winchester v. Bearor.* (See Nos. 65. 116.) - - - - - V. 113
122. Service of an order of Sequestration, *nisi*, upon the Clerk in Court good; the plaintiff having tried in vain to serve it personally. *Marquis of Lothian v. Garforth.* - - - - - V. 115
123. Injunction in pressing cases upon petition and affidavit. In this instance, converting old houses in *London* to a

- purpose, that made them dangerous to the public, the *Lord Chancellor* granted the Injunction; but said, the *Lord Mayor* by his general jurisdiction could apply a much more proper and effectual remedy. *The Mayor, Commonalty, and Citizens of London v. Bolt.* - - - V. 129
124. Service on the defendant's wife ordered to be deemed personal service on the defendant; and upon that service ordered, that he stand committed for breach of Injunction. *Sir William Pulteney v. Shelton.* - - - V. 147. 260, n.
125. Service by sending a *subpœna* to the defendant under cover to the person, to whom he had directed his letters to be sent, ordered to be good service. *Hunt v. Lever.* - - - V. 147
126. Biddings opened on advance of £200 upon £3200: but £100 was held too little. *Anonymous.* - - - V. 148
127. Under a decree for payment of debts out of cash in the Bank, the *Accountant-General* was ordered to pay the executor of a creditor by simple contract under a probate in the diocese, where he had resided: without a prerogative probate: the sum being small; and no *bona notabilia* out of that diocese (a). *Sweet v. Partridge.* - - - V. 148
128. Motion to amend depositions after publication refused. *Ingram v. Mitchell.* - - - V. 297
129. The defendant dying after service of the *subpœna* to hear judgment, whether upon a bill of revivor a new *subpœna* to hear judgment is necessary, *quære.* *Byne v. Potter.* - - - V. 305
130. When an Appeal is abated in the *House of Lords*, the order to revive is obtained of course; and there is no fresh summons. - - - V. 305
131. The Master may proceed *de die in diem* without an order. *Sturdy v. Lingham (b).* - - - V. 423
132. Plaintiff may except to the Report, and at the same time set down the cause for farther directions. *Yeo v. Frere.* *Bowerbank v. Collasseau.* - - - V. 424
133. A re-hearing is the proper mode of impeaching a decree, not signed and enrolled, for error. *Bolger v. Mackell.* - - - V. 509
134. Bill by a former churchwarden against the parish officers, trustees of an estate for the poor of the parish, and forty inhabitants, to be re-imbursed money laid out on account of the trust, under an order of vestry; his accounts being passed, and an order made for payment. Upon demurrer the *Lord Chancellor* expressed a strong opinion against such a bill; and, as it appeared not to be signed by Counsel, ordered it to be taken off the file, and the plaintiff to pay the costs. *French v. Dear.* - - - V. 541
135. On motion at the last Seal after *Trinity Term*, to make absolute an order to dissolve an Injunction *nisi*, the plaintiff cannot have time till the next day of motions

(a) Over-ruled; see the note, Vol. V. page 148.

(b) Over-ruled; see the note, Vol. V. page 423.

upon the usual undertaking to shew cause on the merits ; but was permitted to shew cause during the petitions.

*Robinson v. Walcott.* - - - - - V. 552

136. The Court of *King's Bench* refused to answer a case from the *Rolls*, stated as a trust. *Parsons v. Parsons.* (See No. 115.) - - - - - V. 578

137. Biddings opened for a person, who was present at the sale. *Tait v. Lord Northwick.* - - - - - V. 655

138. After an order for time to answer the bill may be referred for scandal, but not for impertinence. *Anonymous.* - - - - - V. 656

139. Upon a motion for a commission to take defendant's examination the time is left to the Master ; not limited by the order. *Hairby v. Emmett.* - - - - - V. 683

140. The simple fact, that the plaintiff is gone abroad, is not a sufficient ground to compel him to give security for costs. *Hoby v. Hitchcock.* - - - - - V. 699

141. Demurrer allowed in the *Exchequer* upon argument with 30s. costs. In another suit, in *Chancery*, between the same parties and to the same effect it was ordered on motion, that the defendant should have time to answer till payment of those costs, but without prejudice to an application to dismiss the bill. *Holbrooke v. Cra-craft.* - - - - - V. 706, n.

142. Appeal to the *Chancellor* of the Dutchy of *Lancaster* from a decree of the *Vice Chancellor*, dismissing the bill, affirmed by him on a re-hearing on the petition of the plaintiff. *Omerod v. Hardman.* - - - - - V. 722

143. Bill for specific performance of a contract for sale of an estate upon various objections to the title dismissed in the first instance without a reference (a). *Omerod v. Hardman.* - - - - - V. 722

144. Relief, not specifically prayed, within the general relief. V. 495

145. In equity against the answer there can be no decree upon the testimony of a single witness, unless supported by special circumstances. - - - - - VI. 40

146. Order upon the Register of the *Consistory Court*, that an original Will may be produced for the hearing upon giving security. *Hodson v. —.* (See No. 178.) - - - - - VI. 135

147. After two answers reported insufficient the defendant is not entitled to six weeks time to answer. *Gregor v. Lord Arundel.* - - - - - VI. 144

148. Order to strike out the names of two of the plaintiffs on giving security for costs made without consent. *Lloyd v. Makeam.* - - - - - VI. 145

149. Notice of motion on *Saturday* must be given for *Tuesday*, not *Monday.* *Maxwell v. Phillips.* - - - - - VI. 146

150. Order, that service of *subpœna* to answer the amended bill upon the Clerk in Court or Solicitor may be good service, upon the special circumstances ; that, though the defendant had not been served with a *subpœna*, he

(a) See the notes, Vol. V. pages 188. 737.

had appeared on two motions; that his answer would be very important; that he lived abroad out of the jurisdiction; and would not appear to answer. <i>Gelednecki v. Charnock.</i>	Vol. Page VI. 171
151. Under special circumstances and by consent the Six Clerk was directed to receive the answer to a bill of foreclosure, though not signed by the defendant. — <i>v. Lake.</i> (See No. 154.)	VI. 171
152. Upon farther directions a question, decided by the Master, was opened, without any Exception: all the circumstances appearing on the Report. <i>Adams v. Claxton.</i>	VI. 226
153. A party might be compelled to produce papers connected with the relief.	VI. 281
154. Order, that the Six Clerk may receive the answer without signature: the defendant having gone abroad, and forgot to sign it: the motion being consented to. — <i>v. Gwillim.</i> (See No. 151.)	VI. 285
155. Where the bill seeks relief as well as discovery, the Court will not upon motion aid the plaintiff in proceeding at law without the authority and control of the Court: any such proceeding must be under a decree. Therefore in such a case a motion, that the defendant should produce deeds, &c. at the trial of an ejectment, was refused. <i>Aston v. Lord Exeter.</i>	VI. 288
156. Where the bill seeks relief as well as discovery, the Court will not upon motion aid the plaintiff in proceeding at law without the authority and control of the Court: any such proceeding must be under the authority and control of the Court. Therefore in such a case the Court would not on motion order, that an outstanding term should not be set up by the defendant against an ejectment, brought by the plaintiff. <i>Hylton v. Morgan.</i>	VI. 294
157. The Court never makes an order for taking an infant out of its jurisdiction. <i>Mountstuart v. Mountstuart.</i>	VI. 363
158. Practice as to excepting for costs. <i>Holbecke v. Sylvester.</i>	VI. 417
159. Order for liberty to let an infant's estate, without a reference to the Master; the property being small: but not to extend to building leases, nor beyond minority. <i>P—— v. Bell.</i>	VI. 419
160. Maintenance allowed for the time past. <i>Reeves v. Brymer.</i> (See No. 163.)	VI. 425
161. The rule of Courts of Law, that all affidavits shall be filed a certain time before the discussion: the practice of this Court otherwise; and preferred notwithstanding the inconvenience (a).	VI. 437
162. The Court refused to make an order under an Act of Parliament for the sale of estates upon the opinion of a conveyancer, approved by the Court, without a reference to the Master. <i>Att. Gen. v. The Duke of Newcastle.</i>	VI. 451

163. Maintenance allowed for the time past as well as the time to come. *Sherwood v. Smith*. (See No. 160.) - - - VI. 454
164. A reference of an answer for impertinence is waved by a subsequent reference for insufficiency. *Pellew v. —*. VI. 456
165. After a reference for insufficiency the answer cannot be referred for impertinence. - - - VI. 458
166. Objections to interrogatories, settled by the Master, must be taken by Exceptions; not by petition; as an objection to the appointment of a Receiver. *Hughes v. Williams*. - - - VI. 459
167. Upon breach of an Injunction, restraining an act, the proper course is personal service of notice of motion, that the defendant shall stand committed: not the practice to move, that he shall shew cause why he shall not stand committed. *Angerstein v. Hunt*. - - - VI. 488
168. Where the Injunction is to do a thing, the course is to move that he shall do it by a particular day, or stand committed. *Angerstein v. Hunt*. - - - VI. 488
169. The Court will not discharge a purchaser, and substitute another, even upon paying in the money, without an affidavit, that there is no under-bargain. *Rigby v. Macnamara*. (See No. 173.) - - - VI. 515
170. Order, after verdict upon an Issue, to examine *de bene esse*, a witness above seventy; suggesting an intention to move for a new trial. *Anonymous*. - - - VI. 573
171. Upon a reference to the Master as to the fact of a person's death, the Report only stating the circumstances, viz. absence abroad fourteen years without any account of him, but not drawing the conclusion, it was referred back to the Master to state, whether he was dead at the time when administration was granted; especially as two years more had elapsed since the Report. *Lee v. Willock*. - - - VI. 605
172. No order, that a plaintiff, residing abroad, shall give security for costs: where there are co-plaintiffs residing in England. *Walker v. Easterby*. - - - VI. 612
173. One purchaser not substituted for another without affidavit, that there is no under-hand bargain. *Vale v. Davenport*. (See No. 169.) - - - VI. 615
174. General rule, that the Court will not decide upon a title without a reference to the Master, unless unequivocally, and without fraud or surprise, waved: a plaintiff, seeking the specific performance of a contract, being entitled to the opportunity of making out a better title before the Master; and the defendant having a right to farther inquiry, beyond the objections arising on the abstract, upon the principle, that the bill seeks relief beyond the law. *Jenkins v. Hiles*. - - - VI. 646
175. Defendant ordered to pay money into Court before answer in a case of gross fraud, appearing upon affidavit by the plaintiff and by the defendant in answer. *Jervis v. White*. - - - VI. 738

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176. Injunction in <i>Chancery</i> in the Vacation; the Court being always open. - - - - -	VI.	771
177. Motion under special circumstances upon affidavit before answer to restrain proceeding under a judgment, refused. <i>Lane v. Williams.</i> - - - - -	VI.	798
178. Order upon the Register of the Consistory Court to deliver original Wills, for the purpose of being produced at the hearing, on security. <i>Ford v. —.</i> (See No. 146.)	VI.	802
179. The time allowed for filing Exceptions <i>nunc pro tunc</i> is two Terms and the following Vacation. <i>Thomas v. Llewellyn.</i> - - - - -	VI.	823
180. Decree for execution of a trust to pay debts against the trustees: the other defendant not appearing upon process to sequestration. <i>Downes v. Thomas.</i> - - -	VII.	206
181. Order to amend, not served or drawn up, does not prevent a motion to dismiss the bill for want of prosecution. <i>Anonymous.</i> - - - - -	VII.	222
182. Return to an attachment for want of appearance, " <i>Cepi Corpus</i> ," but from illness and infirmity she could not be removed: a Messenger ordered. <i>Miles v. Lingham.</i>	VII.	230
183. An infant plaintiff, a ward of the Court, having married, proceedings staid, till the husband shall appear. <i>Brummel v. M'Pherson.</i> - - - - -	VII.	231
184. The Court refused to permit depositions in the <i>French</i> language to be delivered out for the purpose of being translated. <i>Fauquier v. Tynte.</i> - - - - -	VII.	292
185. Though the Court orders an original Will to be delivered out for a special purpose, as to the jurisdiction, <i>quære.</i>	VII.	292
186. An omission in a decree, if perfectly of course, supplied on motion. In this instance the common direction to examine all parties upon interrogatories being omitted, an order was made, on motion, that the Master should be at liberty to examine, &c. <i>Wallis v. Thomas.</i> -	VII.	292
187. An omission in a decree, if perfectly of course, supplied on motion; viz. in the usual decree upon a creditor's bill against executors the direction for an account of the personal estate. <i>Pickard v. Matheson.</i> - - -	VII.	293
188. To obtain a commission to examine witnesses abroad, it is not necessary to state the points, to which it is intended to examine, or the names of the witnesses. <i>Rougemont v. The Royal Exchange Assurance Company.</i> - - - - -	VII.	304
189. Prerogative probate not dispensed with on account of the smallness of the sum. <i>Newman v. Hodgson.</i> - - -	VII.	409
190. Motion by defendant for inspection of letters, referred to by the plaintiff's depositions, as exhibits, refused with costs. <i>Wiley v. Pistor.</i> - - - - -	VII.	411
191. Evidence not to be received by the Master, after he has settled his Report. <i>Thompson v. Lambe.</i> - - -	VII.	587
192. Motion to examine witnesses <i>de bene esse</i> , except in certain cases, as upon the ground of age, requires notice.		



The affidavit must be either, that the witness is of the age of seventy; or the only witness to the particular fact; or, if upon the ground of health, in a dangerous state. <i>Bellamy v. Jones.</i> - - - - -	VIII. 31
No objection to a motion, that the affidavit was filed only the day before; if it is an affidavit, that cannot be answered; as that the plaintiff cannot go to trial with safety, till the answer comes in. <i>Jones v. —.</i> -	VIII. 46
Motion to pay money into Court upon the affidavit of an accountant, that from the schedules to the answer, the examination and the books of account, such a balance was due, refused. <i>Mills v. Hanson.</i> (See No. 201.)	VIII. 68
Money may be ordered into Court on motion, upon the ground of admission; as by schedules or books containing an account of receipts and payments, and referred to so as to be part of the answer or examination.	VIII. 69
The bill praying discovery and a Commission, the defendant cannot have the costs of the discovery till the return of the Commission. <i>Anonymous.</i> - - - - -	VIII. 69
Practice, that if the defendant to a bill for discovery and a Commission examines in chief, instead of confining himself to cross-examination, he shall not have costs.	VIII. 70
Where it appears by the answer, that the real estate must be responsible, as, that there is no personal estate, to be first applied to debts, a Receiver will be granted in the first instance. <i>Jones v. Pugh.</i> - - - - -	VIII. 71
In a case of mistake in an answer it was not allowed to be taken off the file: but an additional answer, giving the explanation, was permitted. <i>Jennings v. Merton College.</i> (See Nos. 242, 245.) - - - - -	VIII. 71
Construction of the General Order, 23d January, 1794, in the case of a Peer, defendant; that in the cases specified upon application for time to answer the defendant shall enter his appearance; and undertake, that, if the answer shall not be put in, a Sequestration shall go: <i>i. e.</i> a Sequestration absolute. <i>Gregor v. Lord Arundel.</i> -	VIII. 87
A motion to compel a defendant to pay money into Court on casting up books must be upon the ground of admission by reference sufficient to make them part of the examination, as much as schedules to an answer. In this instance it failed: the plaintiff going upon certain books; and the reference being generally to all. <i>Mills v. Hanson.</i> (See Nos. 194, 195.) - - - - -	VIII. 91
Co-defendants not bound as to their rights with respect to each other, unless called upon to contend upon them.	VIII. 123
Service of <i>subpœna</i> upon the father-in-law of an infant good service. <i>Thompson v. Jones.</i> - - - - -	VIII. 141
Answer, admitting the execution of an instrument, and craving leave to refer to it, when produced, is not a ground to move for the production; not admitting, that	



	it is in the possession or power of the defendant. <i>Darwin v. Clarke.</i> - - - - -	Vol. Page VIII. 158
205.	Decree upon a bill taken <i>pro confesso</i> is to be pronounced by the Court, not to be drawn up by the plaintiff. <i>Geary v. Sheridan.</i> - - - - -	VIII. 192
206.	A person, who opened biddings, but was not the purchaser, the estate upon the re-sale going considerably higher, cannot on that ground have his costs. <i>Earl of Macclesfield v. Blake.</i> - - - - -	VIII. 214
207.	Sequestration for not performing the decree upon the return to an Attachment, that the defendant was in custody of the Warden of the <i>Fleet.</i> <i>Errington v. Ward.</i>	VIII. 314
208.	A second Commission granted on special circumstances. <i>Turbot v. —.</i> - - - - -	VIII. 315
209.	No costs upon a notice of motion abandoned till after the third time. <i>Shelly v. Shelly (a).</i> - - - - -	VIII. 316
210.	Service of a writ of execution upon the Clerk in Court not good. <i>Ellison v. Pickering.</i> - - - - -	VIII. 319
211.	Under a joint order for costs one party absconded; and was never served: a proceeding against the other good. <i>Ex parte Bishop.</i> - - - - -	VIII. 333
212.	The practice of issuing an Attachment without an affidavit previously filed, in opposition to orders of the Court, to be corrected in future. <i>Broomhead v. Smith.</i> -	VIII. 357
213.	Practice of moving to pay money into Court <i>forthwith</i> altered. In future a day must be named. <i>Higgins v. —.</i> - - - - -	VIII. 381
214.	The <i>Lord Chancellor</i> declared, that in future, if he should receive a private letter on the subject of a cause, he would consider, whether the writer should not be committed. - - - - -	VIII. 467
215.	A mere denial of combination by answer does not satisfy the undertaking not to demur alone. <i>Lansdown v. Elderton.</i> (See No. 249.) - - - - -	VIII. 526
216.	Appeal from a decree at the <i>Rolls</i> affirmed there upon a re-hearing. <i>Brown v. Higgs.</i> - - - - -	VIII. 561
217.	Defendant submitting to Exceptions is not entitled to farther time under the General Order, 23d January, 1794; having previously had three orders for time, consenting to a Serjeant at Arms; as required by that order. <i>Portier v. De La Cour.</i> - - - - -	VIII. 601
218.	After an Attachment against an infant for want of an answer the proper course is a messenger, to bring the infant into Court to have a guardian assigned. - - -	IX. 12
219.	The old practice to insert in the Decree a direction that the Master is to be armed with power to examine witnesses, which still prevails in the <i>Exchequer</i> and other Courts of Equity, has been long disused in <i>Chancery.</i> By the present course, the Master may certify, that a	

(a) See the note, Vol. VIII. page 316.

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Commission is necessary; which then issues of course.		
<i>Sandford v. Biddulph.</i> - - - - -	IX.	36
Re-hearing upon terms, after a decree <i>nisi</i> by default, made absolute. <i>Vowles v. Young.</i> - - - - -	IX.	172
Undertaking upon a re-hearing, under a General Order, to pay such costs as the Court shall think proper. -	IX.	173
General rule, that parties must clear their contempt, before they can be heard. - - - - -	IX.	173
Where more than the usual time for answering is necessary, the proper course is to apply on affidavit; not to put in a short evasive answer, for the purpose of gaining time. <i>Tomkins v. Lethbridge.</i> - - - - -	IX.	178
An answer, though very insufficient, a satisfaction of the condition in the order not to demur alone. - - -	IX.	179
Motion to sell furniture under a Sequestration for not performing the Decree must be on notice. <i>Mitchell v. Draper.</i> - - - - -	IX.	208
Plea. The plaintiff amended the bill, paying costs. The amended bill not within the General Order, 23d January, 1794; and the defendant therefore entitled to the same time to answer as upon an original bill. <i>Spencer v. Bryan.</i> - - - - -	IX.	231
Amendment of the bill, merely adding a defendant, requiring no farther answer, does not prevent the plaintiff from excepting to the answer. <i>Taylor v. Wrench.</i>	IX.	315
Where a Receiver is in possession, an Ejectment cannot be brought without leave of the Court. <i>Angel v. Smith.</i>	IX.	339
Reference removed from one Master to another, on the allegation of Counsel, that he found the former in such a state, from his advanced age and infirmity, that it was not proper to go into the business before him. <i>Anon.</i>	IX.	341
Notwithstanding an admission of assets by mistake the Court will upon a strong and clear case permit an account. - - - - -	IX.	365
The death of one of the defendants does not necessarily prevent judgment. <i>Davies v. Davies.</i> - - - - -	IX.	461
A special jurisdiction under an Act of Parliament must be strictly followed. Therefore under the Act, preventing the necessity of a Recovery by tenant in tail of land to be purchased, each party must petition. <i>Baynes v. Baynes.</i> - - - - -	IX.	462
Exceptions to the Master's Report under a Decree made at the <i>Rolls</i> may be set down before the <i>Lord Chancellor.</i> <i>Burdon v. Burdon.</i> - - - - -	IX.	499
One defendant may obtain the usual order to speed the cause by motion to dismiss for want of prosecution, though the other defendant stands out process of con-		

- tempt; and it cannot be of any use to go to a hearing without him. *Anonymous*. - - - - - IX. 512
236. Plaintiff driven by motion to dismiss with costs for want of prosecution to an undertaking to speed the cause notwithstanding the bankruptcy of the defendant; and that all the relief could be had under the Commission. *Monteith v. Taylor*. - - - - - IX. 615
237. Order on motion and consent, that a petition of Appeal from the *Rolls* may be withdrawn. *Thomson v. Thomson*. X. 30
238. Upon a decree, taken by default of the defendant at the hearing, the evidence is not to be entered as read. *Stubbs v. —*. - - - - - X. 30
239. Abatement by the marriage of a female plaintiff in a bill of discovery after Answer. The defendant cannot have the costs. *Dodson v. Juda*. - - - - - X. 31
240. Order, appointing a guardian for an infant defendant, on the motion of the plaintiff. *Williams v. Wynn*. - - - X. 159
241. Amendment of Exceptions permitted upon mistake. *Dolder v. The Bank of England*. - - - - - X. 284
242. Answer not taken off the file upon mistake: but a supplemental Answer permitted. (See Nos. 199. 245.) - X. 285
243. Defendant after an order for time cannot have security for costs from a plaintiff, living out of the jurisdiction. *Anon.* - - - - - X. 287
244. At law, if the defendant has taken any step, he cannot have security for costs. - - - - - X. 287
245. The practice formerly was to permit the amendment of an Answer in case of mistake: now a supplemental Answer is put in. The affidavit must state, that the defendant, when he put in his Answer, did not know the circumstance, upon which he applies, or any other circumstances, upon which he ought to have stated the fact otherwise. *Wells v. Wood*. (See Nos. 199. 242.) X. 401
246. As to the practice of moving upon the certificate of the Master, that no examination is put in, or of the Six Clerk, that there has been no proceeding, &c. before the certificate actually granted, and whether notice should be given by the Master, before he grants it, *quære (a)*. *Wills v. Pugh*. - - - - - X. 402
247. After a decree the suit may be revived by a defendant, or the representative of a deceased defendant. *Williams v. Cooke*. - - - - - X. 406
248. Defendant having applied, and obtained an order, for time to answer, cannot put in an Answer and Demurrer, without a special case. As the Demurrer, being coupled with an Answer, could not be taken off the file, it was moved to be expunged, or over-ruled. *Taylor v. Milner*. X. 444

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(a) See the note, Vol. X. page 404.

249. Order for time to plead, answer, or demur, must be on condition of not demurring alone; and the mere denial of combination is not an Answer within that condition. X. 447
250. Plaintiff, entitled to move for the common Injunction to stay execution for want of an Answer, cannot in the first instance move for the special Injunction to stay trial. *Garlick v. Pearson.* - - - - - X. 450
251. Injunction in the Court of *Chancery* stays all proceedings, if before declaration; if after, it stays execution only. - X. 452
252. Ancient Order, that an Injunction shall not be obtained, except by motion in open Court. - - - - - X. 452
253. After Answer, submitting to perform the contract, if a good title can be made, reference directed on motion, whether a good title can be made; and, whether it appears upon the abstract. *Wright v. Bond.* - - - XI. 39
254. Sequestration for want of Answer to be obtained only upon an order *Nisi*; not absolute in the first instance. *Bernal v. The Marquis of Donegal.* - - - - - XI. 43
255. Issue directed at the *Rolls*: a motion for a new trial may be made before the *Lord Chancellor.* *Pemberton v. Pemberton.* - - - - - XI. 50
256. A cause may be set down for farther directions, or upon the equity reserved, before the *Lord Chancellor*, or the *Master of the Rolls*, without regard to the circumstance, where it was heard originally. - - - - - XI. 53
257. The Court of *King's Bench* will not hear any thing against the affidavit to hold to bail. The Court of *Common Pleas* hear affidavits in explanation. - - - - - XI. 55
258. Biddings not opened after confirmation of the Report; unless fraud in the purchaser; or fraudulent negligence in another person, as the agent; of which it would be against conscience that the purchaser should take advantage; or, unless some particular principle arises out of the character of the purchaser, as connected with the ownership of the estate, or some trust or confidence, or his conduct in obtaining the Report. *Morice v. The Bishop of Durham.* - - - - - XI. 57
259. Upon a motion to discharge an Order to take the bill *pro confesso* on payment of costs and an offer to put in an Answer, the Court required to see, what Answer they proposed to put in. Whether the application should be for leave to answer, *quære.* - - - - - XI. 77
260. Executor, directed not to derive any advantage from keeping money in his hands without accounting for legal interest, and to accumulate for the *cestuis que trust*, infants. Decree, directing a computation of interest at 5 *per cent.* on all sums received by him, while in his hands; "and that the Master do in such computation make half-yearly rests." The object of that direction is to charge compound interest; and the decree, though perhaps going farther than usual, was held under

the circumstances, the executor having kept the whole property in his hands, properly executed by a computation of interest upon each receipt from the day it was received; the balance of receipts, with the interest so calculated, and payments being struck at the end of the half year; and that balance, so composed of principal and interest, being carried forward as an item in the account, producing interest. *Raphael v. Boehm.* -

XI

261. Defendant until a fourth insufficient Answer is entitled to be discharged from custody for the contempt immediately on putting in a farther Answer, without waiting the Report, upon the reference of the Exceptions; though the costs have not been accepted (b). *Bailey v. Bailey.* - - - - -
262. After a Decree, merely directing inquiries, such an Order as could be had on farther directions may by consent be made on motion; as, in this instance, to dismiss the bill with costs. *Anon.* - - - - -
263. Order upon the sheriff to pay to the party money under an Attachment for not paying costs. *Anon.* - - -
264. Legacy of Stock at a particular age. Order upon the petition of one legatee, having attained the age, for a transfer of his share to his attorney. *Hill v. Chapman.*
265. Upon a Revivor by *scire facias* according to the old practice all the plaintiffs must have joined. - -
266. Order for taxing a bill of costs, entitled in the cause, if obtained by a party to the cause, regular under the general jurisdiction: but a person, not a party in the cause, must apply *ex parte* under the Statute 2 Geo. 2. c. 23. s. 22. Such an irregularity would be waved by proceeding under the Order. Whether a party, having obtained such an Order in a cause, may pursue it under the Statute, *quære.* *Bignol v. Bignol.* - - -
267. The practice settled, that there should be an Order for the Master to proceed *de die in diem.* Such Order not imperative on the Master, but subject to his discretion. *Purcell v. M'Namara.* - - - - -
268. A purchase before the Master is not complete before confirmation of the Report. Therefore a loss by fire after the Report, but before confirmation, falls upon the vendor; and the circumstance, that the sale had been delayed by the purchaser, having opened the biddings, was not attended to. *Ex parte Minor.* - - -
269. Order, that the name of an infant plaintiff may be struck out; that he may be made a defendant (c). *Tappen v. Norman.* - - - - -

XI

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(a) Affirmed on re-hearing, see No. 304.

(b) See the new Orders.

(c) See the note, Vol. XI. page 564.

An infant defendant, abroad, cannot have a guardian assigned to put in his Answer on motion: but a Commission must go. <i>Tappen v. Norman.</i> - - -	XI. 563
Plaintiff, having obtained the usual Order to amend, and that the defendant shall answer amendments and Exceptions together, cannot take a new Exception as to any thing in the original bill; but must go before the Master upon the old Exceptions, as they apply to the original bill, and upon new Exceptions, as to the new matter introduced by the amendments; which however the Master may consider with reference to such parts of the original bill as apply to them. <i>Partridge v. Haycraft.</i> - -	XI. 570
After Answer upon Exceptions plaintiff cannot add to his Exceptions but may refer the Answer back upon them.	XI. 575
After motion to amend the bill, and that amendments and Exceptions shall be answered together, if the Exceptions are answered, before the Order is drawn up, it is regular.	XI. 578
The usual security for costs by a plaintiff, residing out of the jurisdiction, not increased upon special circumstances; as distress; unless, the plaintiff asking some favour, terms may be imposed upon him. <i>Ogilvie v. Herne.</i> - - - - -	XI. 598
Motion not to be postponed, so as to affect the right to notice. <i>Coffin v. Cooper.</i> - - - - -	XI. 600
Original Decree not to be found; but, having been acted upon by Reports, and recited in an Order on farther directions, was allowed to be drawn up from an Office-copy, and entered <i>nunc pro tunc.</i> <i>Donne v. Lewis.</i> -	XI. 601
After Decree the bill cannot be dismissed by consent; but an arrangement for disposing of the fund in Court may have effect by consent on farther directions. <i>Lashley v. Hogg.</i> - - - - -	XI. 602
Creditors let in at any time, while the fund is in Court; though the time has elapsed. <i>Lashley v. Hogg.</i> -	XI. 602
The only answer to the motion to dismiss a bill for want of prosecution is the undertaking to speed the cause. Special circumstances must be the ground of special application. <i>Lyon v. Dumbell.</i> - - - - -	XI. 608
Where a party is avoiding service, and the Clerk in Court is dead, the proper course is to move, first, that service of a <i>subpœna</i> to name a Clerk in Court on the Solicitor may be good service; if none is named, then, that service on the Solicitor may be good service. <i>Francklyn v. Colhoun.</i> - - - - -	XII. 2
The practice to direct a reference upon the title on motion after answer limited to the case, where the title only is disputed. <i>Gompertz v. —.</i> - - - - -	XII. 17
Order under circumstances to pay dividends to trustees, or one of them. <i>Shortbridge's case.</i> - - - - -	XII. 28
Special Order upon circumstances for time to answer without first obtaining the usual Orders. <i>Norris v. Kennedy.</i>	XII. 66





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| 284. Order to take the Answer of defendants, out of the jurisdiction, without oath and signature. <i>Harding v. Harding</i> . (See Nos. 151. 154.) - - - - -  | XII   |
| 285. Order to refer back to the Master an Examination, under the direction in a Decree for examination of the parties, to see whether it was sufficient. Exception to the Report, and in general terms, that the Master had reported the Examination sufficient, whereas he ought to have reported it insufficient, is regular; but not to be encouraged; and therefore being over-ruled, costs beyond the deposit were given. <i>Purcell v. M'Namara</i> . - | XII   |
| 286. Depositions referred for scandal upon motion of course, without notice. <i>Eastham v. Liddell</i> . - - - - -  | XII   |
| 287. A person having attended under a <i>subpœna</i> as a witness, but refusing to be sworn, ordered to attend to be examined, or stand committed. <i>Hennegal v. Evance</i> . -  | XII.  |
| 288. The practice of personal service, as a foundation for process of contempt, dispensed with, where the party must have notice; as upon a short Order for execution of a Decree. <i>Rider v. Kidder</i> . - - - - -   | XII.  |
| 289. The practice of personal service, as a foundation for process of contempt, dispensed with under circumstances; a party declaring, he would not execute an Order, and absconding to avoid it. <i>De Manneville v. De Manneville</i> . -   | XII.  |
| 290. After an Order upon a party in the cause for payment of money, the proper course is an Attachment: and upon the return to that an Order for commitment. <i>Bowes v. Lord Strathmore</i> . - - - - -  | XII.  |
| 291. The Master not ordered to certify, whether he was satisfied with the production of papers by a party. <i>Cotton v. Harvey</i> . - - - - -  | XII.  |
| 292. Examination to the credit of witness can only be by Order upon special application, with notice, whether before or after publication. Therefore evidence taken to that point upon the examination in chief, suppressed, as impertinent. <i>Mill v. Mill</i> . - - - - -  | XII.  |
| 293. Order on motion, with consent, to rectify a clear mistake in a Decree. <i>Newhouse v. Milford</i> . - - - - -  | XII.  |
| 294. Order on motion, with consent, to rectify a clear mistake in a Decree. It must be a separate, supplemental, Order. <i>Lane v. Hobbs</i> . - - - - -  | XII.  |
| 295. Order to dismiss for want of prosecution regular, according to the practice: though the Six Clerk's certificate appeared on the face of the Order to be of a subsequent date. <i>M'Mahon v. Sisson</i> . - - - - -   | XII.  |
| 296. Co-plaintiff, as next friend, struck out; his evidence being necessary; but, as a general rule, upon giving security for the costs incurred. <i>Witts v. Campbell</i> . - - -  | XII.  |
| 297. The effect of taking Exceptions, pending a demurrer to discovery, is to admit the demurrer. Plaintiff permitted to withdraw the Exceptions, paying the costs, without prejudice. <i>Boyd v. Mills</i> . - - - - -  | XIII. |



Where amendment is permitted, if so considerable as to deface the Record, it must be taken off the file, and a new Record substituted. - - - - -	XIII. 86
Bill dismissed by one co-plaintiff as to himself with costs, without the consent of the other. <i>Langdale v. Langdale</i> .	XIII. 167
Witness, examined in the cause, re-examined before the Master upon different interrogatories by Order. <i>Greenaway v. Adams</i> . - - - - -	XIII. 360
Distinction between motion and petition, as applied to carry into effect Decrees and Orders. - - - - -	XIII. 393
Money not paid out of Court on motion. - - - - -	XIII. 394
No addition to or alteration in a Decree by motion or petition. - - - - -	XIII. 394
See No. 260. Affirmed on re-hearing. <i>Raphael v. Boehm</i> . - - - - -	XIII. 407
The only answer to the motion to dismiss for want of prosecution is the usual undertaking to speed the cause. A special ground must be the subject of a special application. <i>Bligh v. —</i> . - - - - -	XIII. 455
At law, after a peremptory undertaking to go to trial a special application is necessary. - - - - -	XIII. 456
Motion to suppress depositions upon groundless objections, and not only after publication, but even after the cause had been called on, and struck out, refused. <i>Whitelocke v. Baker</i> . - - - - -	XIII. 511
A Decree, taken <i>pro confesso</i> , in the ordinary course, after appearance not under the Statute 5 Geo. 2. c. 25, can be impeached, as any other Decree, only directly, by a Bill of Review, or a Bill to set it aside for fraud; not collaterally, by an original suit, seeking a Decree inconsistent with it. Such a bill therefore dismissed, with costs. <i>Ogilvie v. Herne</i> . - - - - -	XIII. 563
It is not necessary, that the affidavit for an Order, that service of the <i>subpœna</i> upon an Injunction Bill on the attorney at law shall be good service, should state a previous application to the attorney, and refusal, to accept service. <i>French v. Roe</i> . - - - - -	XIII. 593
Defendant to a bill for an account cannot upon motion immediately after Answer have a reference to the Master, by analogy to the case of a mortgage, by Stat. 7 Geo. 2. c. 20; and the case of specific performance, according to the practice, settled; though the reason of it is questionable. <i>Eldridge v. Porter</i> . - - - - -	XIV. 139
Objection to a motion, upon the right to costs of previous notices, abandoned, cannot be made until the fourth. <i>Anderson v. Palmer (a)</i> . - - - - -	XIV. 151
General rule not to open biddings, after confirmation of the Report, upon negligence, surprise, the circumstances	

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(a) See the note, Vol. XIV. page 151.

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of the estate, &c. without something unconscientious on the part of the purchaser. <i>White v. Wilson.</i> -	XIV.	151
313. No rule, fixing the advance on opening biddings at £10 <i>per cent.</i> More, or less, will be required according to circumstances. <i>White v. Wilson.</i> - - - -	XIV.	151
314. Answer of a mere trustee, without interest, in a state of incapacity, not to be taken without oath and signature. The proper course is to have a guardian appointed. <i>Wilson v. Grace.</i> - - - -	XIV.	172
315. Motion for payment of money into Court, not admitted to be due even upon examination of the defendant, but appearing due by his schedule, according to the plaintiff's calculation, refused. For such a purpose the result of the schedule, ascertaining the sum due, must clearly appear, verified by affidavit. <i>Quarrell v. Beckford.</i> - - - -	XIV.	177
316. Serjeant at Arms not granted under a four-day Order to bring in books, &c. before the Master, until made absolute by a subsequent Order upon the Master's certificate, of the same date. <i>Carleton v. Smith.</i> - -	XIV.	180
317. Writ of execution only in the case of a party. A stranger must be served, first, with an order to pay the money by a given day, and in case of default with another order to pay on another day or stand committed. <i>Anon.</i>	XIV.	207
318. Order to amend upon petition at the <i>Rolls</i> , after notice of motion to dismiss for want of prosecution for the Seal, the day, on which the Order was obtained, and the motion could not be made, regular. <i>White v. Hall.</i>	XIV.	208
319. Motion for production of deeds and papers, referred to as in defendant's possession, but not described by the answer or schedule, and without an offer to produce them, as the Court shall direct, refused. <i>Atkyns v. Wright.</i> - - - -	XIV.	211
320. Qualified submission to produce a deed, if the Court shall require it, does not fix the defendant; and deprive him of the discretion of the Court as to the propriety of the production. - - - -	XIV.	213
321. Order to dismiss the bill for want of prosecution cannot be had, if a proceeding has been taken before the motion: but if the Order has been obtained irregularly by misrepresentation of the plaintiff, he shall pay the costs of discharging it. <i>Anon.</i> - - - -	XIV.	492
322. Upon farther directions, under the usual decree for an account against an administratrix, an inquiry as to balances in her hands from time to time, with a computation of interest thereon, prayed by petition, upon affidavits of her conduct before the Master, by attempting to support her discharge by forgery, &c. was granted. <i>Parnell v. Price.</i> - - - -	XIV.	502
323. A purchaser may be committed for disobeying an Order to pay in his money. <i>Lansdown v. Elderton.</i> - -	XIV.	512

324. Order to stay proceedings, until security given for costs, upon affidavit, that the plaintiff since the Answer had abandoned this country, and resides in the *Isle of Man*. *Weeks v. Cole*. - - - - - XIV. 518
325. General rule, that an appeal does not stay proceedings without a special ground. The decree, being for the specific performance of a contract for purchase, according to the Answer, the execution only was suspended: the Master to proceed to settle the conveyance, &c. *Gwynn v. Lethbridge*. - - - - - XIV. 585
326. Order of a preceding *Lord Chancellor* not to be re-heard upon minutes; but must first be drawn up. *Taylor v. Popham*. - - - - - XV. 72
327. Motion to take off the file for irregularity a plea to a bill, amended under the usual Order, after Exceptions allowed, refused; as a case for a plea may arise either from the amendments themselves, or from their effect upon the original part of the bill. *Ritchie v. Aylwin*. XV. 79
328. Though generally a party cannot be heard, until he has cleared his contempt, a step, taken by the other party, waves the contempt for all purposes, except the right to costs; as costs in the cause; not to be obtained by process of contempt. Acceptance of the Answer therefore a waiver of the contempt for the purpose of enabling the defendant to dismiss the bill for want of prosecution. *Anon*. - - - - - XV. 174
329. Order on motion of defendant for examination of plaintiff, saving just exceptions: the plaintiff consenting to be examined. *Walker v. Wingfield*. - - - - - XV. 178
330. Defendant, in *Newgate* under a criminal sentence, having been brought up by *Habeas corpus* for not putting in his Answer, and remanded to *Newgate*, as to the farther proceeding, *quære*. *Lloyd v. Passingham*. - - - - - XV. 179
331. Injunction, on motion of course to deliver possession of land decreed; as a ground for the Writ of Assistance, the only mode of obtaining immediate possession: a Court of Equity properly acting only *in personam*. *Huguenin v. Baseley*. - - - - - XV. 180
332. Order, dismissing a bill for want of prosecution after three Terms expired without any step taken, obtained upon motion of course; not requiring notice. *Degraves v. Lane*. - - - - - XV. 291
333. After Answer to a bill of discovery motion to amend the bill by adding a prayer for relief refused with costs. *Butterworth v. Bailey*. - - - - - XV. 358
334. Plaintiff in a bill for discovery pays the costs. - - - - - XV. 361
335. Distinction as to Exceptions in the Courts of *Chancery* and *Exchequer*. - - - - - XV. 377
336. Bill by a widow, devisee in fee, impeaching a mortgage by her, while covert, for want of a Fine. Answer admitting possession of the Will and the title under it;

- alleging the loss of the settlement; stating it differently from the bill by the addition of a power of revocation and appointment of new uses, by the exercise of which a Fine was not necessary. Production of the Will, not being offered by the Answer, ordered on motion. *Bird v. Harrison.* - - - - - XV. 408
337. Order for the appointment of a person to act as guardian (the father being living) and for a reference as to maintenance, but not for a Receiver, upon a petition, without any suit instituted (a). *Ex parte Mountfort.* - - - XV. 445
338. After answer not of course to enlarge publication until answer to a cross bill. *Dalton v. Carr.* - - - XVI. 93
339. Order, obtained by plaintiff, under the usual undertaking to speed his cause, for liberty to withdraw his replication, and amend the bill, discharged with costs. *Pitts v. Watts.* - - - - - XVI. 126
340. Order to dismiss the bill for want of prosecution, after three Terms, without replication, of course, without notice; and pending an Injunction, staying execution. *Naylor v. Taylor.* - - - - - XVI. 127
341. Motion to enlarge publication in the original cause until answer to a cross bill, the original cause being set down for hearing, and the cross bill filed after rules for passing publication, refused with costs. *Cook v. Broomhead.* - - - XVI. 133
342. Biddings opened upon a second application by the same person: the purchaser not appearing upon notice. *Breston v. Barker.* - - - - - XVI. 140
343. Order, dismissing the bill for want of prosecution, after three Terms, without replication, of course, without notice; and not discharged upon special circumstances, except on payment of costs. *Jackson v. Pownall.* - - - XVI. 204
344. Order by one defendant to examine another not of course after, as before, a decree. In a special case, to ascertain which trustee actually received money, all having signed the receipt, the Court refused to discharge the order, made two years before; but required the examination without delay. *Franklyn v. Colquhoun.* - - - XVI. 218
345. Different practice of the Courts of *King's Bench* and *Common Pleas* as to putting off a trial in the absence of a witness: the former being satisfied with an affidavit, that the party cannot safely go to trial without the evidence: the latter requiring the reason. - - - XVI. 222
346. After process to a Serjeant at Arms issued, but not executed, Answer, and Exceptions submitted to by a note between the Clerks in Court; but, no farther Answer being put in, the Serjeant at Arms ordered to go. *Waters v. Taylor.* - - - - - XVI. 417
347. Defendant, taken upon the process for want of an Answer, is on putting in an Answer, entitled to be dis-

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(a) See the note, Vol. XV. page 449.

charged without waiting for the Report, that it is sufficient. - - - - -

XVI. 418

348. Member of Parliament refusing to enter an appearance, the Court appointed a Clerk in Court to enter an appearance for him under Statute 45 Geo. 3. c. 124. s. 3. *Reed v. Philips.* - - - - -

XVI. 436

349. The object of the bill being to set aside deeds, the Court will not on motion go beyond the usual liberty to inspect, &c. and for production at the hearing, by an Order to deposit them with the Master for safe custody, without a special case; establishing danger, that they may not be produced. Therefore, where most of the circumstances, relied upon, viz. variation in two deeds, appeared upon the Answer, the Order was limited to production at the hearing. *Beckford v. Wildman.* -

XVI. 438

350. Construction of the General Order (23d January, 1794). Defendant, after Exceptions allowed, not having previously come under terms, is entitled of course to one Order for time: the General Order not attaching before the second application for time to answer an amended Bill, or after Exceptions allowed. *Wells v. Powell.* -

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351. Plaintiff, under an undertaking to speed his cause, obtained an Order to withdraw his replication, and set down on Bill and Answer; but did not serve a *subpoena* to hear judgment; or appear, when the cause was called. The Bill was dismissed with costs. *Rogers v. Goore.* - - - - -

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352. Reference, whether two suits are for the same matter, is obtained by plea, in *Chancery*, as in the *Exchequer*; not by motion. *Murray v. Shadwell.* - - - - -

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353. Petition, failing as to the principal objects, dismissed generally. - - - - -

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354. Reference of title on motion in a simple case of specific performance; when nothing more. - - - - -

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355. Charges of a sale to be taxed under the head of just allowances, not of costs. *Crump v. Baker.* - - -

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356. Defendant, in custody for want of his Examination, discharged immediately on putting it in: but, if on reference it proves insufficient, the plaintiff, not having accepted the costs, may proceed from the last process. *Bonus v. Flack.* - - - - -

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357. Order, after the bill dismissed, for payment of money out of Court. *Wright v. Mitchell.* - - - - -

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358. Costs not given on a motion, unless mentioned in the notice. *Mann v. King.* - - - - -

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359. Demurrer and answer after a peremptory order for three weeks farther time to answer, following an order for a month to plead, answer, or demur, not demurring alone, ordered to be taken off the file. *Mann v. King.* -

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360. Service upon the attorney, the defendant being abroad, only to compel appearance, not for the purpose of a

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special Injunction in the first instance. <i>Anderson v. Darcy.</i> - - - - -	XVIII.	447
361. Order on plaintiff's motion, that defendant shall be at liberty to put in his Answer without oath or signature, of course, if defendant is in this country; if abroad, his consent required. <i>Codner v. Hersey.</i> - - -	XVIII.	468
362. Issue, whether an instrument was obtained by fraud, &c. not directed on motion after answer; as where the decree depends upon a simple fact, viz. legitimacy, or competence; according to the present practice to refer a title on motion. <i>Fullagar v. Clark.</i> - - -	XVIII.	481
363. Attachment on service of <i>subpœna</i> in Scotland (a). <i>Shaw v. Lindsay.</i> - - - - -	XVIII.	496
364. Order to examine a party, saving just exceptions, of course on the suggestion of no interest, refused, where an interest appeared. <i>Anonymous.</i> - - -	XVIII.	517
365. Service of <i>subpœna</i> to hear judgment necessary, though the cause was set down under the order upon a peremptory undertaking to speed the cause. <i>Dixon v. Shum.</i>	XVIII.	550
366. Order on a peremptory undertaking to speed the cause entered <i>nunc pro tunc</i> of course on motion without notice above two years afterwards. <i>Dixon v. Shum.</i> -	XVIII.	520
367. Illness an exception to the rule, that an application for time to answer on special grounds must be made in the first instance, before the usual orders obtained. ——— <i>v. Riddle.</i> - - - - -	XIX.	112
368. Interrogatories and depositions not referred for impertinence alone, without scandal. <i>White v. Fussell.</i> -	XIX.	113
369. After defendant's examination on interrogatories, and motion for payment into Court on that examination, plaintiff permitted to file farther interrogatories. <i>Hatch v. ———.</i> - - - - -	XIX.	116
370. Practice settled to move on examination, admitting money due, for payment into Court, before the cause is set down for farther directions. - - - - -	XIX.	117
371. For the purpose of commitment under a short order to pay money the person, serving the order, must have an authority to receive the money. <i>Wilkins v. Stevens.</i> -	XIX.	117
372. After publication order for examination by general interrogatories as to the credit of a witness in the cause, and as to such particular facts only as are not material to the issue: but, publication having passed five months, not to delay the hearing. The Court does not previously consider, whether the subject of the examination is material to the issue; but in that case will suppress the depositions. <i>White v. Fussell.</i> - - -	XIX.	127
373. Examination to credit after publication, where the witnesses are in the country, by commission, on articles exhibited by one of the Six Clerks. <i>White v. Fussell.</i>	XIX.	127

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374. Practice, after a decision by one Court, instead of rehearing or appealing, to institute a suit in another Court for the same object disapproved. *Reynolds v. Pitt.* - XIX. 134
375. Affidavits not admitted on motion against the Answer except upon waste; and in a case of partnership those filed originally with the bill for an Injunction, merely as to mismanagement or exclusion, not in support of the title. *Norway v. Rowe.* - - - - - XIX. 144
376. Motion for a Receiver on a mining concern refused upon a claim of partnership in the equitable interest, not raised, until the concern was at a great expense become prosperous, and denied by the Answer. *Norway v. Rowe.* XIX. 144
377. Reason of the practice in the Master's office of receiving the party's affidavit in support of his claim, as a creditor, that he must give that assurance, that the debt is due; but, if it is contested, no attention is given to the affidavit. *Fladong v. Winter.* - - - - - XIX. 196
378. Under decree for account of proceeds of a joint adventure on bill by one party on behalf of himself and the others, and inquiry, who are concerned with the plaintiff, the Master, having by advertisement, as usual, declared those, who should not come in, excluded, reported several persons, who had not come in to claim, entitled to shares. Farther advertisements directed; but payment into Court of those shares refused; and the decree not to be executed as to those, who should not come in. *Good v. Blewitt.* - - - - - XIX. 336
379. In an Injunction cause affidavits admitted on motion against the Answer, not on the title, but on questions of fact; as in the instance of waste, &c.; and the original affidavit, where the defendant having obtained time to file affidavits, instead of that puts in an Answer. *Morphett v. Jones.* - - - - - XIX. 350
380. *Subpœna*, served on *Sunday*, irregular. Attachment and Injunction therefore set aside, before appearance, on entering appearance with the Register. *Mackreth v. Nicholson.* - - - - - XIX. 367
381. Commission to examine witnesses abroad before Answer: the object of the suit being merely to obtain evidence for an action. *Noble v. Garland.* - - - - - XIX. 372
382. Practice of the Court of *Exchequer* not to grant a Commission to examine witnesses abroad until after Answer; as in the cases on Policies of insurance; the bill praying equitable relief, viz. to deliver up for fraud, &c. though not going beyond the motion to dissolve the Injunction: as an action will try the question. - - - - - XIX. 375
383. The right to process under an undertaking for a Serjeant at Arms, &c. immediately on Exceptions to the Report of an insufficient Answer disallowed, waved by plaintiff's taking out a *subpœna* for a better Answer, and excepting to the Report; entitling defendant to eight days



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after the Exceptions are disposed of. <i>Agar v. The Regent's Canal Company.</i> - - - - -	XIX.	379
384. Service of copy of an Order without producing the original not good, unless that production is waved. <i>Wallis v. Glynn.</i> - - - - -	XIX.	380
385. To shew cause against a Decree on default by defendant at the hearing the Order, must be to set down the cause on some day immediately, not after the causes already set down. <i>Margravine of Anspach v. Noel.</i> - - -	XIX.	573
386. After examination under Decree before the Master, concluded and made known, farther examination not permitted without an Order, on surprise clearly established. <i>Willan v. Willan.</i> - - - - -	XIX.	590
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388. After publication no farther examination without leave, not obtained without great difficulty; and generally confined to some particular facts. - - - - -	XIX.	592
389. Under Decree, directing inquiries, the Master cannot without an Order examine a witness, who has been examined in chief in the cause. - - - - -	XIX.	592
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 3. Not residuary legatee to bill for specific legacy.  
 4. Not joint owner to bill against factor as to the other moiety, having kept distinct accounts, &c.  
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7. Creditor, filing a bill against executor, cannot make a debtor of the debtor a party; in case of insolvency of the executor the Court will on petition appoint a Receiver; and compel the executor to allow his name to be used in bringing actions. *Uttersen v. Mair*. - - - II. 95
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  2. Conveyance decreed; subject to an annuity to one, not heard of for fourteen years; when she went to *Ireland*.
  3. Not on mere possession many years farther than the title actually appearing. No account on laches.
  4. Payment on recognizance to refund for a party, not heard of twenty years.
  5. Whether on mere length of possession.
  6. Of re-conveyance of the legal estate against a purchaser.
  7. Of conveyance of the legal estate.
  8. Not always on belief.
  9. } Of grants. Principle of quieting possession, and from
  10. } time. As to incorporeal hereditaments.
  11. }
  12. Of payment of a bond from non-payment of interest.
  13. Against a mortgage on twenty-five years without interest paid.
  14. General.
  15. Of Charters and Act of Parliament.
  16. Of death from time has relation to the commencement of the period.
  17. Not against express reservation of mines merely on expenditure permitted.
- 
1. Matters of record are presumed. Deeds are presumed to be lost. - - - - -
  2. A conveyance decreed, subject to an annuity charged on the estate; the annuitant having gone to *Newry* in *Ireland* fourteen years ago; and no payment made, or account obtained of her since. *Mainwaring v. Baxter*. -
  3. Upon possession for many years, the origin of it not appearing, and no title except as *Cestuy que trust* under a Term to raise a sum of money, the Court would not presume any other title; and therefore decreed the plaintiff to be let into possession on payment of the charge; but with reluctance; and on account of the laches refused an account of the rents even from the filing of the bill. *Acherley v. Roe*. - - - - -

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4. Payment ordered, where one party entitled had not been heard of for twenty-years, upon a recognizance to refund in the event of a claim. *Bailey v. Hammond.* - - - VII. 580
5. As to presumption in favour of a title of a re-conveyance, for instance, or republication of a Will, upon mere length of possession, unaided by other circumstances, *quære.* VIII. 129
6. Re-conveyance of the legal estate presumed under obscure circumstances, after a great lapse of time; though the possession originally not adverse, but under a trust. Upon that presumption a specific performance decreed against a purchaser. *Hillary v. Waller.* - - - XII. 239
7. Notwithstanding the rule, according to the late authorities, that a legal estate, clearly outstanding, prevents an Ejectment, it may be left to the jury to presume a conveyance of the legal estate. - - - XII. 251
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10. Principle of presumption from length of time. - - - XII. 262
11. As to incorporeal hereditaments, right of way, public, as well as private, &c. Presumption from length of time, that it was surrendered, or never existed. - - - XII. 265
12. Presumption of payment of a bond upon twenty years or less without payment of interest; unless repelled by circumstances. - - - XII. 266
13. Mortgage presumed satisfied: no interest having been received for twenty-five years. - - - XII. 266
14. General presumptions upon the want of means of belief. XII. 266
15. Charters, and even an Act of Parliament presumed. - XII. 377
16. Presumption of death from length of time, has relation to the commencement of the period. *Webster v. Birchmore.* XIII. 362
17. No presumption of a grant of mines against an express reservation on a sale, many years ago, merely from permitting expenditure without claim. - - - XIX. 156

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1. Clandestine sale by agent on his own account to principal.
2. Liberty to surcharge, &c. account settled from loose papers: no regular books.
3. Fictitious purchase, and lease taken, by agent.
4. Receipt in full not allowed as a general discharge of steward, except special circumstances.

5. Agent with general power to sell, &c. cannot pledge for his own debt.
6. By the *Civil* and *English* laws those dealing with agent must look to his authority.
7. Account opened on fraud of agent, also tenant; though laches.
8. Payment to agent good.
9. Security taken without account.
10. Liberty to surcharge, &c. account settled between two agents, without vouchers.
11. No interest for money kept by desire of principal.
12. Agent for gross neglect not allowed costs, as solicitor.
13. Purchase of share in colliery for the agent and manager.
14. Payment by agent good.
15. Principal generally not bound by agent's clerk.
16. Written authority unnecessary.
17. } Limits of agent's evidence, to bind principal; with re-
18. } ference to agreement, act, letter, receipt.
19. }
20. Agent's expenses, from his conduct not to be ascertained, disallowed. Interest limited on acquiescence.
21. Agent, naming his principal, not responsible.
22. Decree against confidential agent, in possession of estates since 1780 without account to his principal, residing in *Ireland*.
23. Steward bound to account, though not called on.
24. Issue, whether deposit as agent for sale or purchaser.
25. Contract by a broker binds both.
26. Interest and costs against a steward on fraud, &c.; and generally without limitation of time.
27. Exception to interest against a steward.
28. No difference as to interest between Receiver, or Agent and Trustee, &c.
29. Relief as to lease by client to attorney without full consideration: not as to voluntary lease, as a gift, without fraud, &c.
30. } Agent confounding property with his own, bound to
31. } distinguish: analogous instances at law. In such a
32. } case no prospective direction, usual in a fair case, to
33. } admit books, not evidence.
34. Purchaser under false description not bound by agent's act.
1. An agent, who was to have no emolument beyond his salary, decreed to account for profit made by a clandestine sale to his principal on his own account. *Massey v. Davies*.
2. Account between principal and agent settled from loose papers; the agent having kept no regular books. After his death liberty was given to surcharge and falsify upon allegation of errors since discovered. *Lord Hardwicke v. Vernon*.

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3. Agent, employed to sell estates, took them for himself under colour of a fictitious purchase; and sold part: after his death an inquiry was directed to ascertain the real value; according to which his estate was to be charged; the principal having an option to take what remained unsold; and, the agent having fraudulently prevailed on his principal to execute a lease under the real value, the agent's estate was charged with the loss arising from that. *Lord Hardwicke v. Vernon.* - IV. 411
4. On suspicious circumstances in the Answer a general account was decreed against a steward, notwithstanding a receipt in full; which was allowed only as proof of the particular payment, not of a general release or discharge on an account stated; though under circumstances it might have that effect; as upon proof, that the principal never would give any vouchers, and an account kept by the steward. *Middleditch v. Sharland.* V. 87
5. Under a general power to sell, assign, and transfer, an agent cannot pledge for his own debt. *De Bouchout v. Goldsmid.* - - - - - V. 211
6. By the *Civil* law, as well as by the law of *England*, if a person is acting *ex mandato*, those dealing with him must look to his authority. - - - - - V. 213
7. Accounts opened, and a general account decreed against an agent, who was also tenant to his principal, in respect of fraud. The character of the defendant, as agent, accompanying him in his situation as tenant, deprives him of the benefit of an objection, that might be competent to another person; as the neglect of the plaintiff in not bringing forward the demand at an earlier period. Affirmed on re-hearing. *Beaumont v. Boulton.* - - - - - V. 485. VII. 599
8. Payment to an agent is payment to the principal. *Thomson v. Thomson.* - - - - - VII. 470
9. Bill for a general account lies against a solicitor and agent, taking a security without a settlement of accounts. VII. 584
10. Accounts, settled between two agents without vouchers upon confidence, not to be considered settled against their principal without liberty to surcharge and falsify. VII. 617
11. Agent, by the desire of his principal keeping large sums in his hands, for which he is to be responsible from time to time, and duly accounting, not liable to interest, even supposing he employed it. - - - - - VIII. 48
12. A confidential agent, in that character bound to keep regular accounts, having neglected to do so, and to preserve vouchers against himself, though he had preserved those in his own favour, was, on the ground of gross neglect of duty, not allowed a charge in respect of bills of costs for business done as a solicitor. *White v. Lady Lincoln.* - - - - - VIII. 360



13. Purchase of a share in a colliery in trust for the agent and manager confirmed under particular circumstances; but with reluctance. *Wren v. Kirton.* - - - VIII. 502
14. Payment by the agent is payment by the principal. - IX. 221
15. Vendor bound by the signature of the agent's clerk, thus: "Witness *Evan Phillips* for Mr. *Smith*, agent "for the seller," upon evidence of assent: but clerks of agents in general have no authority to bind the principal. *Coles v. Trecothick.* - - - IX. 234
16. Agent need not be authorized in writing. - - - IX. 250
17. Though an agent may within the scope of his authority bind his principal by his agreement, and in many cases by his acts, evidence of his declarations is confined to what is, either by the statement itself, or as tending to determine the quality of contemporary acts, the foundation of, or inducement to, the agreement. In this instance the agency was not made out. *Fairlie v. Hastings.* X. 123
18. Letter by an agent is not evidence against the principal of a pre-existing agreement; though it may be of an agreement contained in that letter. - - - X. 128
19. Whether a receipt, given by an agent for goods, directed to be delivered to him, is evidence against the principal, *quære.* - - - X. 128
20. Claims by the agent for the expenses on account of the principal, which, from the conduct of the agent, undertaking the business without authority or agreement, could not be ascertained, disallowed. Interest not carried farther than the time the bill was filed, on the ground of acquiescence. *Beaumont v. Boulton.* - V. 485. VII. 599. XI. 358
21. Agent not responsible: if he names his principal, as the person to be responsible. - - - XII. 352
22. Account against a confidential agent, in possession of estates since 1780, without giving any account to his principal, residing in *Ireland*; and an inquiry into the circumstances of a lease granted under his direction, and in which he took an interest, and a reversionary lease to himself. *Lady Ormond v. Hutchinson.* XIII. 47. XVI. 94
23. Steward bound to account periodically; though not called on. - - - XIII. 53
24. A valuable picture, deposited by an executor with a dealer in pictures, and claimed to be retained by him as purchased at a very low price: Issue directed to ascertain, whether there was a sale, or the possession was as agent, and trustee for sale; who therefore could not purchase without full communication. An objection, that the transaction, not being in the usual course of administering assets, could not protect a purchaser from the executor, was therefore not determined. *Lowther v. Lord Lowther.* - - - XIII. 95
25. Contracts by a broker binding on both parties. - - XIII. 473

26. Interest and costs decreed against a steward, upon fraud, wilful concealment, &c.; and in such cases, generally, there is no limitation of time. *Earl of Hardwicke v. Vernon.* - - - - - IV. 411. XIV. 5
27. There may be cases, in which interest would not be decreed against a steward, holding money in his hands; where that practice can be said to have the sanction of the principal. - - - - - XIV. 5
28. No difference between the implied contract of trustees, assignees, and executors, and of a receiver and agent; bound to account faithfully, at least when called upon, and not to suppress, conceal, or over-charge: liable therefore to interest, as a receiver. - - - - - XIV. 5
29. Bill to set aside leases, obtained by an agent and attorney from his principal, dismissed as to voluntary leases; being pure gift; and no fraud, misrepresentation, &c. with costs as to some, intended as a provision upon, and inducement to, the marriage of the defendant: without costs as to others: the relation of the parties and the circumstances upon general principles of public policy and utility justifying inquiry. Another lease decreed to be delivered up: the verdict in an Issue establishing, that a full consideration was not paid. *Harris v. Tremeneere.* - - - - - XV. 5
30. Agent, or bailiff, confounding his principal's property with his own, charged with the whole; except what he can prove to be his own; and in this instance, the case of a breach of the terms, upon which the Court dissolved an Injunction, the inquiry was directed with costs. The Court refused in such a case a prospective direction to admit books, not legal evidence; usual in a fair case; as, where from want of notice of an adverse claim a strict account cannot be given; merely giving liberty to apply upon any question of evidence. *Lupton v. White.* - - - - - XV. 4
31. Corresponding with the rule in equity to charge an accounting party, who has wilfully confounded the fund with his own property, with the whole, throwing upon him the discharge, instances at law, where the defendant having wilfully prevented the plaintiff's proving the real value of his property, damages to the utmost value the article could bear were given: whether that should have been carried far beyond the possible value, *quære.* XV. 4
32. Purchaser under a particular, giving a false description, not bound at law or in equity, nor by an act of his agent without a fresh authority or subsequent approbation: a different agreement requiring a fresh authority. XVIII. 5

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### PRINCIPAL AND SURETY.

1. Conversation, when raising money, evidence to rebut.
2. } Surety discharged by privately taking notes from prin-
3. } cipal, and giving time.
4. { Surety to the *East India* Company discharged by pay-
5. { ment under erroneous settlement by their officers to
- the principal. Relieved from a payment under duress.
6. Proof in bankruptcy at request of surety on security.  
*Indian* interest refused.
7. Surety may be sued first: but is discharged by time  
given to the principal.
8. Surety by deposit and indemnity may compel even proof  
in bankruptcy.
9. Discharge of one surety does not discharge the others.  
Contribution among them.
10. Discharge of surety by discharging principal without  
reserve.
11. { Surety by bond not liable beyond the penalty. Right
12. { under the bankruptcy of the principal. Distinction
- upon a bill.
13. Proof against each on bill or bond without distinction  
of sureties.
14. No equity for substitution from part-payment.
15. Surety's right even against bail.
16. Undertaking for another's debt.
17. No distinction from a separate instrument.
18. { Distinction between co-sureties and a distinct collateral
19. { security, not liable to contribution; as co-sureties are,
20. { whether by the same or several instruments, limited
- by their respective contracts. Difficulty on the modern  
jurisdiction at law.
21. Evidence admitted.
22. Penalty of annuity-bond, forfeited, allowed as the debt  
to a surety, having the securities by re-payment of  
the advance with the arrears, then less than, but  
subsequently exceeding, the penalty.
23. Guaranty requires no consideration as between the cre-  
ditor and surety.
24. Indorsement necessary to a bill, notwithstanding a  
guaranty expressly as if indorsed.
25. Surety discharged by a new security from the principal  
without prejudice.
26. Composition with reserve against sureties must plainly  
appear.
27. Securities, held by a banker against his acceptances,  
available to the bill-holders, not directly, but  
through acceptor's equity.
- .. Any evidence of conversation between principal and surety  
at the time of raising the money is evidence to rebut. -

- |   |    |
|---|----|
|   | Vo |
| 2. Obligee in a bond with a surety without communication with the surety takes notes from the principal; and gives farther time: the surety is discharged. <i>Rees v. Berrington</i> . (See Nos. 3. 7.) - - - - -   | II |
| 3. Creditor sues the principal by direction of the surety, but without his privity agrees to stay execution: the surety is discharged. (See Nos. 2. 7.) - - - - -   | II |
| 4. A surety to the <i>East India</i> Company discharged by payment of a balance to the principal under an erroneous settlement by the officers of the Company without their authority or knowledge. <i>Law v. The East India Company</i> . - - - - -  | IV |
| 5. The <i>East India</i> Company having compelled payment from a surety in <i>India</i> by their power over him, as one of their servants, without an account or proceeding against the principal, (though solvent) and otherwise under harsh circumstances, he was restored to the same situation by a decree for re-payment with interest at 5 <i>per cent.</i> upon giving security for re-payment, in case in a future suit by the Company he should be held liable. The Court would not upon the circumstances give <i>Indian</i> interest. <i>Law v. The East India Company</i> . - - - | IV |
| 6. Proof by obligee under a Commission of Bankruptcy against the principal at the request of the surety, securing the obligee by paying the amount of the bond into a bankers. - - - - -  | VI |
| 7. A surety may be sued in the first instance: but if the creditor sues the principal first, and gives time, the surety is discharged. (See Nos. 2. 3.) - - - - -   | VI |
| 8. Surety, depositing the money and indemnifying against expense, &c. may compel the creditor to go against the principal, and even to prove under a Commission of Bankruptcy for the benefit of the surety. - - - - -  | VI |
| 9. The discharge of a surety by the creditor has not the effect of a discharge of the principal without reserve; and therefore a co-surety is not discharged. When it is ascertained, what each of the co-sureties has paid beyond his proportion, the equity as between them is arranged upon the principle of contribution for the excess. <i>Ex parte Gifford</i> . - - - - -  | VI |
| 10. Grounds of the decision, that a discharge of the principal debtor, without a reserve of the remedy against the surety, discharges the surety. - - - - -   | VI |
| 11. Surety by bond for advances generally, but under a limited penalty, not liable beyond that amount; and, paying that sum, is entitled to a proportion of the dividends on the proof by the creditor to a greater amount under the bankruptcy of the principal debtor. <i>Ex parte Rushforth</i> . - - - - -  | X. |
| 12. Surety in a bond may compel the creditor to prove under the bankruptcy of the principal debtor; and the cre-  |    |

- ditor will be a trustee of the dividends for the surety, paying the whole. But a person, liable with others upon a bill of exchange cannot raise that equity by payment, subsequent to the proof of the holder, until he has received 20s. in the pound. - - - - - X. 414
13. Proof against each person liable upon a bill or bond, if nothing received before the bankruptcy, until 20s. in the pound received; without distinction, whether principals or sureties. - - - - - X. 416
14. Rule, that a man, engaged for the whole debt, and paying only part, has no equity to stand in the place of the person paid. - - - - - X. 420
15. Surety entitled to the same right as the creditor, even against bail. - - - - - XI. 22
16. Undertaking for the debt of another within the Statute of Frauds. - - - - - XIII. 134
17. No difference in the relation of sureties, that one is so by a separate instrument. - - - - - XIV. 31
18. No contribution in favour of one surety against another: his engagement, according to the bond, and parol evidence, which was held admissible, being, not as co-surety, but, without the privity of the other, as a distinct collateral security, limited to default of payment by the principal and the other surety. *Craythorne v. Swinburne.* - - - - - XIV. 160
19. Right to contribution, as between co-sureties; whether by the same or several instruments, whether privity, or not, and, whatever their number: depending rather upon a principle of equity than contract, except as upon the implied knowledge of that principle. Modern jurisdiction of the Courts of Law attended with difficulty, where the sureties are numerous; especially since the decision, that separate Actions may be brought against different sureties, for their respective proportions. - XIV. 164
20. Right of contribution among co-sureties limited by the extent of their respective contracts; as, where they are for different sums. - - - - - XIV. 165
21. Evidence admitted to shew, who is principal, and who surety. - - - - - XIV. 170
22. Annuity-bond, forfeited, when the grantor was discharged under an Insolvent Act; which provided, that future estate should not be discharged: the penalty, being less than the subsequent arrears, was allowed as the debt, and not only in favour of the purchaser of an annuity, but also of a co-obligor, as surety; having compounded with the purchaser, and obtained possession of the securities by re-paying the money advanced, with the arrears, then due; being at that time less than the penalty. *Butcher v. Churchill.* - - - - - XIV. 567
23. Undertaking in writing to guarantee the debt of another sufficient, within the Statute of Frauds, without stating

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| any consideration as between the creditor and the surety.<br><i>Ex parte Gardom.</i> - - - - -   | XV. 286   |
| 24. Under the guaranty of a bill of exchange, expressly as if the surety had indorsed it, the bill not being due until after his bankruptcy, no proof: actual indorsement being necessary. - - - - -   | XV. 288   |
| 25. Creditor, having among other securities a bond with a surety, taking a mortgage from the principal debtor, and agreeing to receive the residue by instalments, secured by warrants, &c. without prejudice to any security he now holds, injunction granted against suing the surety. <i>Boulbee v. Stubbs.</i> - - - - - | XVIII. 20 |
| 26. Composition, with reserve of the remedy against sureties valid; but must plainly appear. - - - - -   | XVIII. 22 |
| 27. Securities, held by a banker against his acceptances, available to the bill-holders, not directly, but through the equity of the acceptor, or the assignees under a Commission of Bankruptcy against him, to have them applied in discharge of the acceptances. <i>Ex parte Waring.</i>                                  | XIX. 345  |
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1. Under a bill of sale of a ship, with possession taken, as far as could be, to a prior equitable agreement.
  2. Third mortgagee, taking in the first; who, when conveying, knew of the second.
- |   |                         |
|---|-------------------------|
| <ol style="list-style-type: none"> <li>1. Equitable agreement by articles for security upon a share of a ship, then building; with a covenant for a future bill of sale, and, if the ship should be sold in the interval, for payment out of the purchase-money, postponed to a subsequent bill of sale, with possession taken, as far as it could be, subject to the builder's possession and lien. <i>Daniel v. Russell.</i> - - - - -</li> <li>2. Whether a third mortgagee, taking in the first, can exclude the second, where the first, when conveying to the third, knew of the second, <i>quære.</i> - - - - -</li> </ol> | XIV. 333<br><br>XV. 335 |
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## PRIVILEGE.

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2. Demurrer by Solicitor to Clerk in Court's Bill over-ruled.
3. Decree *pro confesso* against Member of Parliament confined to Bills for Discovery.
4. Against answering a question tending to criminate, &c.

Whether the Journals of the *House of Lords*, delivered to a Peer, go with the title, *quære*. *Upton v. Lord Ferrers*. - - - - -

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The authority to take the bill *pro confesso* against a defendant, having privilege of Parliament, standing out process of contempt under statute 45 Geo. 3. c. 124. s. 5, is confined to bills for discovery only (a). *Jones v. Davis*. - - - - -

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- EST.—1. Attending arbitrator under order of Court.
2. Of bankrupt, extends to Attachment for not paying under an award, made a Rule of Court.
  3. Attending Commissioners of Bankruptcy under a summons: or a creditor, though not summoned. Effect of a breach.
  4. Party attending his own suit.
  5. Of bankrupt attending Commissioners, independent
  6. { of the Statute, and under it: Whether lost by
  7. { deviation to leave his books with the assignee.
  8. Solicitor returning from attending the Master.
  9. Defendant returning from attending the Master. Necessary deviations allowed.
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A party, attending an arbitrator under an order of the Court, is privileged from arrest. *Moore v. Booth*. -

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The privilege of a bankrupt from arrests during his examination extends to an Attachment for not paying money under an award, made a Rule of Court. *Ex parte Parker*. - - - - -

III. 554

A person attending under a summons of Commissioners of Bankrupt privileged from arrest. Ordered, that the parties arresting, and who had lodged detainers, having notice, should discharge him. The attorney having

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(a) See the note.



- undertaken to indemnify the officers, and they having acted under that, guilty of a contempt; and ordered to pay all costs out of pocket. The *Lord Chancellor* also intimated, that a creditor, attending to prove his debt, though not under a summons, is entitled to privilege. *Ex parte King.* - - - - - VII. 312
4. Party attending his own suit privileged from arrest. - VII. 314
5. Bankrupt's privilege from arrest in attending the Commissioners, independent of the Statute 5 Geo. 2. - VII. 314
6. A bankrupt's privilege from arrest extends to the end of the forty-second day. Ordered, that the plaintiff in the Action should discharge him; and the officer, having acted without instructions, was ordered to pay the costs. *Ex parte Donlevy.* - - - - - VII. 317
7. Whether a deviation by a bankrupt, returning from examination, for the purpose of leaving his books at the house of the assignee, will deprive him of his privilege, *quære.* *Ex parte Donlevy.* - - - - - VII. 317
8. Solicitor, arrested in his return from attending the Master, discharged in the original action and subsequent detainers. The proper course is an Order upon all the plaintiffs to discharge him. *Ex parte Ledwich.* - VIII. 598
9. Order, that the plaintiffs in an action and detainers discharge the defendant, arrested, when returning home from his examination before the Master. Though necessary deviations are allowed, the question always is upon the *bond fides*; especially where the examination is not finished. *Sidgier v. Birch.* - - - - - IX. 69
10. A solicitor, arrested upon his return direct from attending his client's business in *Lincoln's Inn Hall* to his own house, without delay or deviation, discharged upon examination *vivâ voce* of him and the officer, taken and the oath administered, personally by the *Lord Chancellor*, sitting in bankruptcy, the Register therefore not present. *Gascoyne's case.* - - - - - XIV. 183
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1. Determinations in Municipal Courts not by consent of nations.
2. The statutes do not extend the Admiralty jurisdiction.
3. Appellant's right beyond the security to follow the property or proceeds in the agent's hands. Extent of jurisdiction.
4. To the Crown for want of a Letter of Marque.
5. Expectation from the habit of the Crown insurable.
6. Jurisdiction on bill of military officers on behalf of themselves and all others, &c. for an account.

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7. No interest completely vested before condemnation.  
Relation then to the capture.
8. Though strictly bounty, considered as property, transmissible, &c. before the Crown's grant.
  
1. Prize causes determined in Municipal Courts not by consent of nations: for it is just cause of war, if their decisions are not agreed to. - - - - - I. 391
2. Statutes of prize do not extend the Admiralty jurisdiction beyond its natural extent. - - - - - I. 391
3. The appellant from a decision of condemnation in the Admiralty Court is not bound to adhere to the security given; but may follow the property or the proceeds in the hands of an agent. The prize jurisdiction extends to the question, whether a person, who received and sold the property, received it as consignee for valuable consideration, or as prize agent. A Prohibition therefore against a Monition to bring in the property or the proceeds was refused. *Case of the Ship Noysomhed.* VII. 593
4. Sentence in the Court of Admiralty, upon a prize to a privateer, as a *droit* to the Crown, for want of a Letter of Marque. The property is in the Crown. Motion, to restrain the parties from receiving, and the Register of the Court of Admiralty from paying, the proceeds under a Treasury warrant refused with costs. *Nicol v. Goodall.* - - - - - X. 155
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6. Jurisdiction of a Court of Equity upon a Bill by officers of the army and the *East India* Company, on behalf of themselves and all others, &c. for an account of prize-money received beyond the due proportion, and for a distribution according to the King's grant and usage; considering the defendants as trustees: but upon the construction of the grant, as not creating a trust, a demurrer was allowed. *Brown v. Harris.* - - - XIII. 552
7. No interest completely vested in prize before condemnation: but upon condemnation it is considered the property of the captor from the time of the capture. *Stevens v. Bagwell.* - - - - - XV. 139
8. The Crown in prize-grants puts what is strictly bounty upon the footing of right; considering the claim as transmissible to the legal representatives of the claimant, deceased before the grant, subject to his Will, &c.; as his other property. *Stevens v. Bagwell.* - - - XV. 139

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2. }
  
1. The Court cannot dispense with a prerogative administration. *Challnor v. Murhall.* - - - VI. 118

2. To get money out of Court, however small the amount, a prerogative probate is necessary. *Thomas v. Davies.*  
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2. Cannot sue as pauper : discharged perhaps in a gross case : not for poverty.  
3. Refused costs beyond taxed.
1. After Answer plaintiff not compelled to change the next friend on affidavit, that she was worth nothing, and not found till after Answer, contradicted by her Answer to £44 a year. Defendant ought not to have answered ; but should have said, he could not find her. *Anon.* - I. 409  
2. Next friend cannot sue *in formâ pauperis* ; but ought not to be discharged for poverty : dangerous to displace him ; though perhaps there may be a case gross enough for it. - - - - - I. 410  
3. The Court refused a *prochein amy* the costs beyond the taxed costs. *Osborne v. Denne.* - - - - - VII. 424  
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1. }  
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1. Name, given on profession in a Convent, is not meant for the rest of the world : but the former name continues. I. 416

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1. Proceeding on bail-bond in the *Marshalsea*, after Prohibition, restraining the Action, not a contempt.  
2. On affidavit, omitting that foreign plea was tendered ; whether regular. Contempt not prevented by irregularity.  
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1. A proceeding upon a bail-bond in the *Marshalsea Court*, assigned according to the practice of that Court to one

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of the officers, is not a proceeding against a Prohibition, restraining the original Action, so as to incur a contempt.

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2. Whether a Prohibition issued from the Court of *Chancery*, without application in Court, upon an affidavit, stating merely, that the cause of action arose out of the jurisdiction, not adding, that foreign plea was tendered, and refused, is regular, *quære*. But if it is irregular, any proceeding against it is a contempt. The party ought to apply to the Court to supersede it. The form of the affidavit to be altered in future. *Iveson v. Harris.*

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4. Purchaser not compelled to take an equitable estate.
5. Purchaser pays for the conveyance.
6. }
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8. }
9. }
10. A fair objection, though over-ruled, justified.
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12. Relief against lapse of time.
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14. Under a bankruptcy: as to title.
15. } Purchaser not compelled to take a doubtful title; nor
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17. Purchaser who cannot have the original title-deeds, entitled to attested copies.
18. Under a general charge for debts, followed by specific dispositions, purchaser not to see to the application.
19. On bargain and sale without enrolment vendor compelled to make a title.
20. Notice of appropriation required to excuse a purchaser from interest.
21. Whether purchaser from feoffees of trustees under a general charge of debts, not scheduled, is to see to the application.
22. Objections by purchaser on illegitimacy from the want of a register of marriage, &c.
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28. Purchaser not compelled to take leasehold for freehold.
29. By *feme* from *baron*, to separate use, sustained against creditors.
30. Subsequent incumbrancer, without notice, protected by the legal estate.
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34. Subsequent incumbrancer, without notice, protected by the legal estate. Trustee, with notice, assigning.
35. Priority : depending on the right to the legal estate.
36. Interest on possession without conveyance ; though a particular day for payment on execution.
37. Generally possession waves objection to title.
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39. Moral, not mathematical, certainty of title.
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44. Effect of indefinite representation ; to suggest inquiry ; or rescind the contract.
45. Vendor, resisting payment of the deposit into Court, charged with a loss by his agent's failure.
46. After delay on title, both praying performance, rents and interest from the time stipulated.
47. Purchaser not discharged on Report of defective title : but terms as to time imposed.
48. By the solicitor, to prevent a sale at an under-value, not discharged.
49. { Act of bankruptcy alone a sufficient objection : so, with  
 50. { docket, even after part-payment, and sub-contracts  
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6. Purchaser with notice is bound in all respects as the vendor; therefore where tenant for life granted leases for lives under a power, and bound himself upon the dropping of a life to grant a new lease with the same provision for renewal on the death of any person to be named in any future lease, and afterwards joined in a sale, though the power is exceeded, yet if a life drops in the life of the lessor, the purchaser, having notice, must specifically perform by granting a new lease with the same provision. General notice to a purchaser, that there are leases, is notice of all their contents. <i>Taylor v. Stibbert.</i> - - - - -	II.	437
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10. Purchaser justified in taking a fair objection, though over-ruled. <i>Cox v. Chamberlain.</i> - - - - -	IV.	631
11. <i>Quære</i> , whether a purchaser under a power to revoke uses, substituting other estates of equal value, is not bound to shew the value of the substituted estates. - - - - -	IV.	638
12. The conduct of the parties, inevitable accident, &c. might induce the Court to relieve against a lapse of the day fixed for completing a purchase. <i>Lloyd v. Collett.</i> - - - - -	IV.	690, n.
13. Account of arrears of an annuity decreed against a purchaser with notice: the length of time not being sufficient to raise a presumption of satisfaction. <i>Wynn v. Williams.</i> - - - - -	V.	130
14. A purchaser under a bankruptcy must take such title as the bankrupt had, and cannot insist upon a title strictly free from objection, as in other cases (a). In such a case the purchaser objecting to the title, but insisting on his purchase, his bill for a specific performance was under the circumstances dismissed with costs, except as to some part of the answer and the depositions containing irrelevant matter. <i>Pope v. Simpson.</i> - - - - -	V.	145
15. Upon a late decision of the Court of <i>Exchequer</i> , that a presumption from non-payment of tithes cannot bar even a lay-impropriator, the <i>Lord Chancellor</i> , though holding		

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(a) Over-ruled; see the note, Vol. V. page 147.



- the contrary opinion, would not compel a purchaser to take such a title; and dismissed the bill against him for a specific performance (a). *Rose v. Calland.* - - - V. 186
- A purchaser not compelled to take a doubtful title: nor will a case be directed without his consent. The Court also hesitated upon giving sanction to a title, founded on the destruction of contingent remainders by the tenant for life; there being no trustees to support them. *Roake v. Kidd.* - - - - - V. 647
- A purchaser who cannot have the original title-deeds, the estate being sold in a great number of lots, is entitled to attested copies at the expense of the vendor, notwithstanding the inconvenience and expense. *Dare v. Tucker.* - - - - - VI. 460
- Charge or direction by Deed or Will for payment of debts generally, followed by specific dispositions; the purchaser is not bound to see to the application. - - - VI. 654
- In the case of a bargain and sale without enrolment the vendor will be compelled to make a title. - - - VI. 745
- To excuse a purchaser from paying interest during the delay in clearing difficulties as to the title, it is not sufficient, that the money was appropriated and unproductive: but the vendor must have notice of that. *Powell v. Martyr.* - - - - - VIII. 146
- Whether the rule, that, where there is a general charge of debts not scheduled, a purchaser is not to see to the application, holds where the purchase is not from the original trustees, but from others, to whom they conveyed, *quære*. An objection upon that distinction was over-ruled upon circumstances. *Lord Braybroke v. Inskip.* - - - - - VIII. 417
- Objection by a purchaser upon illegitimacy, upon the circumstances, that the register of marriage could not be found; an inaccurate statement in a deed, and some particularity of description of the child in a Will. Upon the time of the marriage, previous to the Marriage Act, and other circumstances, the *Lord Chancellor's* opinion was against the objection: but it was over-ruled upon a general release: which, though only reciting generally, that objections were taken, was held sufficient; as binding the party to inquire into the nature of the objections. *Lord Braybroke v. Inskip.* - - - - - VIII. 417
- The rule, that a purchaser shall have possession as from the quarter-day preceding the sale, does not apply to a colliery; which is an article of trade, the profits accruing daily. The proper period is the month or week, in which the purchase takes place; according to the usual course of taking the account. *Wren v. Kirton.* - - - VIII. 502

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(a) See the note, Vol. V. page 188.

24. Bill by tenant in tail in possession under a marriage settlement for discovery and delivery of title-deeds. Plea, mortgage by the tenant for life, alleging himself to be seised in fee, and in possession of the premises and deeds as apparent owner, allowed; upon the rule, that a Court of Equity gives no assistance against a purchaser for valuable consideration without notice. *Wallwyn v. Lee.* - - - - - IX.
25. Averments necessary to a plea of purchase for valuable consideration without notice: that the vendor or mortgagor was the owner or pretended owner; and that he was in possession: not, that the purchaser was. - - - IX.
26. Principle of the plea of purchase for valuable consideration without notice. - - - - - IX.
27. A purchase under a decree, though affected by irregularity and notice, not set aside in favour of a subsequent remainder-man; a prior tenant in tail having been a party. *Lloyd v. Johnes.* - - - - - IX.
28. A purchaser cannot be compelled upon the principle of compensation to take under a contract for a freehold estate a leasehold, though a very long term. *Drewe v. Corp.* - - - - - IX.
29. A purchase by a married woman from her husband, through the medium of trustees for her separate use and appointment, may be sustained against creditors; if *bond fide*; though the husband is indebted at the time; and even though the object is to preserve from his creditors for the family the subject of the purchase: in this instance ancient family pictures, furniture, and other articles, of a peculiar nature and value. The circumstances of the comparative value of the consideration, the continued possession, (according to the title, by the relation of the parties,) the degree of notoriety, the want of an inventory, the satisfaction of some debts out of the property, &c. though circumstances of evidence, are not conclusive, as to the nature of the transaction. *Lady Arundell v. Phipps.* - - - - - X. 1
30. Rule between incumbrancers, that a subsequent incumbrancer, without notice, and having as good a right, getting in the legal estate, by assignment of a term, or possessing himself of the deed creating it, is protected. - - - X.
31. To make a good title to the residue of an old term, mesne assignments, which cannot be produced, will be presumed, even at law. - - - - - XI. 3
32. An old incumbrance to be attended to; unless it can be presumed, that it does not exist. - - - - - XI. 3
33. Mischievous consequences of the distinction, established by the case of *Shapland v. Smith*, between a title good or bad and such as a purchaser will or will not be compelled to take. - - - - - XI. 4

- . A subsequent incumbrancer without notice protected by getting possession of the deed, creating an outstanding term. As to the consequence to the trustee, assigning to him, though aware of a prior incumbrance, and whether the Court would interfere by Injunction, *quære*. XI. 613
- . The question of priority between incumbrancers, if the legal estate has not been got in, depends upon the better right to call for it; and the prior incumbrancer, if he has that right, is in equity in the same state as if he had an assignment. - - - - - XI. 618
- . A purchaser, taking possession without a conveyance, was compelled to pay interest; though the money was to be paid at a particular day on the execution of the conveyance. *Fludyer v. Cocker*. - - - - - XII. 25
- . Possession taken generally amounts to a waiver even of objections to title. - - - - - XII. 27
- . A purchase under a Decree not affected by irregularities and defects in the Decree, by which the application of the money may not have been properly secured. *Curtis v. Price*. - - - - - XII. 89
- . The Court must govern itself by a moral certainty upon title; for it is impossible there should be a mathematical certainty. - - - - - XII. 252
- . Whether upon the sale of an annuity, charged upon a real estate, the vendor must make out the title of the grantor to the estate charged, *quære*. *Radcliffe v. Warrington*. - - - - - XII. 326
- . Vendor upon objection to the title, sold to another, after notice, that she would do so, if the title was refused. Under a Bill for a specific performance, or an Issue, or reference, to ascertain the loss of the first purchaser, a reference was directed upon the authority of *Denton v. Stuart*. As to the principle, *quære*. *Greenaway v. Adams*. - - - - - XII. 395
- . Effect of a deposit by vendee, with notice to vendor; to stop, or determine the rate of, interest: not as a tender and appropriation, transferring the risk as to the principal. Therefore, upon an investment in stock by the vendee, the title not being ready, and the vendor having notice, but returning no answer, the advantage by a rise, as the loss by a fall, is the vendee's. *Roberts v. Massey*. - - - - - XIII. 561
- . Under a bill to have a contract delivered up on the ground of the defective title of the defendant, the vendor, and for compensation for the injury to the plaintiff by the failure of the contract, the Decree was made for delivering up the contract, without prejudice to an action; instead of an inquiry before the Master. *Gwillim v. Stone*. - - - - - XIV. 128
- . Effect of an indefinite representation by a vendor; as that a leasehold estate was nearly equal to freehold,

being renewable upon a small fine; putting the purchaser upon inquiry; though, connected with certain circumstances, such representation may be fraudulent; and form a ground for rescinding the contract. *Fenton v. Browne.* - - - - -

XIV.

45. Vendor, resisting an application by the purchaser for payment into Court of the deposit in the hands of the vendor's agent, charged with a loss by the agent's failure. *Fenton v. Browne.* - - - - -

XIV.

46. Specific performance prayed both by original and cross-bill, after considerable delay upon the title: the rents to be received, and interest paid, from the time stipulated. *Fenton v. Browne.* - - - - -

XIV.

47. Purchaser cannot insist upon being discharged upon a Report of defective title; if capable of being made good within a reasonable time; as to which the vendor will be put under terms. *Coffin v. Cooper.* - - - - -

XIV.

48. The Court refused to discharge the Solicitor in the cause from a purchase before the Master with the view of preventing a sale at an under-value. *Nelthorpe v. Pennyman.* - - - - -

XIV.

49. An act of bankruptcy a sufficient objection to title; without shewing a debt, upon which a Commission could issue. *Lowes v. Lush.* - - - - -

XIV.

50. An act of bankruptcy, and a docket struck, though no Commission issued, a sufficient objection to a bill for specific performance of a previous contract for the sale of an estate to the plaintiff; in a case even, where part of the money had been paid; and sub-contracts for sale of part entered into by the plaintiff; and the defendants had agreed to convey accordingly. *Franklin v. Lord Brownlow.* - - - - -

XIV.

WORDS OF.—1. }  
2. } In a deed construed in their legal sense.

1. A Deed is construed more strictly than a Will, according to the legal import of the words. Therefore in a marriage settlement after life estates to the husband and wife a remainder to the heir male of her body by him to be begotten, and to his heirs, and, for want of such issue, to the daughters, and, if there should be no issue of the marriage, to the right heirs of the husband, was held a contingent remainder in fee in such person as should be heir male of the wife at her death. *Bayley v. Morris.* - - - - -

IV.

2. Under a limitation by deed to the father for life, remainder to his issue male, remainder to the father in fee, the sons took by purchase as joint-tenants for life only; the word "issue" in a deed being a word of purchase. - - - - -

IV.

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## REAL REPRESENTATIVE.

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## RECEIVER.

1. Duties. Chargeable with interest.
  2. Gives security to account. Distinguished from *West India* manager.
  3. Whether order for distress or attornment.
  4. Not restrained in ejecting by remote remainder-man and tenants.
  5. Duty and power.
  6. } A barrister may be : not the solicitor in the cause : nor
  7. } the trustee.
  8. Reference for liberty to defend Ejectment.
  9. Allowed repairs without an order.
  10. Trustee cannot be.
  11. } Not passing his accounts pays interest ; and loses
  12. } poundage.
  13. Trustee not to be without a special case, and no emolument.
  14. Charged with a loss.
  15. } Repairs without previous application : inquiry, whether
  16. } reasonable.
  17. Exception to the Master's appointment requires a strong case.
  18. On motion against the legal estate under a conveyance on strong suspicion of abused confidence from the Answer.
  19. Commitment for not paying balance under an order.
  20. Expenditure at discretion limited.
  21. In *England* of estate in *India* : limited as to letting.
  22. Not passing accounts and paying in testator's personal estate, deprived of salary ; and charged with interest, as executor.
  23. Distinguished from executor.
  24. General Order for passing accounts, &c.
  25. The Master's appointment not absolutely conclusive : but the Court interferes with reluctance on circumstances : distinction as to an Auditor.
  26. General rule, that trustee shall not be, with emolument.
  27. Against the legal title in a strong case of fraud on affidavits.
  28. Not merely on dissolution of partnership without breach of duty, &c.
  29. Before Answer.
  30. On equitable charge and judgment, but execution prevented ; and over the whole estate, though far more valuable.
1. Receiver must pay in his money yearly ; and must pay nothing out without an order. He shall pay interest for money kept in his hands even a quarter of a year

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- after it ought to have been paid in. Inquiry directed as to that; though he had passed his accounts, and all parties declared themselves satisfied. *Fletcher v. Dodd.* I. 85
2. Receiver here gives security duly to account; not for faithful management. He cannot set and let, or make expenditures without application to Court: manager in *West Indies* may. (See Nos. 9. 15. 16. 20.) - - I. 139
3. Whether Receiver should get an order to distrain or for attornment, *quære.* *Hughes v. Hughes.* - - - I. 161
4. Motion by a remote remainder-man and tenants to restrain Receiver from ejecting tenants refused with costs; their interest not being sufficient. *Wynne v. Lord Newborough.* - - - - - I. 164
5. Receiver is to let the estate to the best advantage; but he cannot raise the rents upon slight grounds; nor turn out tenants; nor let even for one year without application to the Master. - - - - - I. 165
6. It is no objection to a Receiver, that he is a practising barrister: but the solicitor in the cause cannot be Receiver. *Garland v. Garland.* - - - - - II. 137
7. The trustee cannot be Receiver. *Anonymous.* (See Nos. 10. 13. 26.) - - - - - III. 515
8. Upon a motion, that a Receiver may be at liberty to defend an ejectment, the parties interested being adult and consenting, a reference was made, whether it was for their benefit. *Anonymous.* - - - - - VI. 287
9. A Receiver is not to lay out money in repairs at his own discretion: but under circumstances an inquiry was directed; and the Report stating, that the expenditure was for the lasting benefit of the estate and by the direction of the trustees, the order for the allowance was made. *Blunt v. Clitherow.* (See Nos. 2. 15. 16. 20.) VI. 799
10. A Trustee cannot be Receiver; whether he is sole trustee, or jointly with others. — v. *Jolland.* (See Nos. 7. 13.) - - - - - VIII. 72
11. Receiver, not passing his accounts, shall always pay interest upon the balances in his hands. — v. *Jolland.* VIII. 72
12. Receiver, who does not pass his accounts regularly, not to be allowed poundage. - - - - - VIII. 371
13. Trustee not to be Receiver; unless a special case, and without emolument. *Sykes v. Hastings.* (See Nos. 7. 10. 26.) - - - - - XI. 363
14. Receiver charged with a loss by the failure of the banker; having made the remittances to his own credit and use; and not to a separate account for the trust. *Wren v. Kirton.* - - - - - XI. 377
15. Receivers and Committees not to apply the trust fund in repairs to any considerable extent without a previous application. *Attorney-General v. Vigor.* (See Nos. 2. 9. 16. 20.) - - - - - XI. 563



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| 16. Upon a Receiver's application to be allowed for repairs done an inquiry was directed, whether the repairs were reasonable. <i>Attorney-General v. Vigor</i> . (See Nos. 2. 9. 15. 20.) - - - - -   | XI.   |
| 17. To maintain an Exception to the Master's appointment of a Receiver a strong case of disqualification is necessary. <i>Tharpe v. Tharpe</i> . - - - - -   | XII.  |
| 18. Receiver upon motion against the legal estate under a conveyance upon a strong suspicion of abused confidence, arising upon the Answer. <i>Huguenin v. Baseley</i> . (See No. 27.) - - - - -   | XIII. |
| 19. Receiver, not paying in a balance under an Order, may be proceeded against personally by commitment. A previous Order, in the alternative, that by a certain day he shall pay or stand committed, is necessary; though he was under an Order for payment by a certain day upon his appearance by counsel, praying time. <i>Davis v. Cracraft</i> . - - - - -   | XIV.  |
| 20. Receiver not permitted to lay out more than a very small sum at his discretion. (See Nos. 2. 9. 15. 16.) - - -   | XV.   |
| 21. Appointment of a Receiver of an estate in <i>India</i> : the Receiver to be in <i>England</i> ; acting by an agent. Inquiry directed, what should be the term, beyond which he should not be permitted to let. — <i>v. Lindsey</i> . -   | XV.   |
| 22. Receiver of the personal estate of the testator, not passing his accounts, and paying in the balances, deprived of his salary; and charged with interest: not upon each sum from the time it was received, according to the strict rule, applicable to a Receiver of annual rents and profits; but as an executor would be charged. <i>Potts v. Leighton</i> . - - - - -   | XV.   |
| 23. Distinction between an Executor and a Receiver as to allowances for charges and trouble. - - - - -   | XV.   |
| 24. General Order, that Receivers shall annually pass their accounts, and pay in their balances; or lose their salaries, and be charged with interest at 5 per cent. -   | XV.   |
| 25. Petition to change a Receiver. The Master's judgment not absolutely conclusive: but the Court interferes with reluctance. The recommendation of the testator and the respect due to a considerable family are to be attended to in the appointment. The circumstances of the person proposed (in this instance a relation of the family), a residence, distant from the estate, being in Parliament, and a practising barrister in town, though no absolute disqualification, are to be considerably regarded. Distinction with reference to such circumstances, between an Auditor, and a Receiver. <i>Wynne v. Lord Newborough</i> . - - - - - | XV. 2 |
| 26. General rule, that a Trustee shall not be the Receiver, with emolument. <i>Sutton v. Jones</i> . (See Nos. 7. 10. 13.)   | XV. 5 |

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27. A Receiver may be appointed against the legal title in a strong case of fraud upon affidavits: but under the circumstances of this case, an application after Answer for that purpose, an Injunction against committing waste and disposing of the estate was refused. *Lloyd v. Pas-singham*. (See No. 18.) - - - - - XVI. 59
28. Receiver not ordered merely on a dissolution of partner-ship. Ordered on breach of the duty of a partner; or of the contract; as by continuing trade with joint effects on the separate account. *Harding v. Glover*. - - - XVIII. 281
29. Receiver on affidavits before Answer. *Duckworth v. Trafford*. - - - - - XVIII. 283
30. Receiver, in default of payment into Court, on an equit-able charge and a judgment, but execution prevented by the circumstances of the title. The right not affected by a subsequent variation of circumstances; and es-tablished over the whole estate, though of great value compared with the debt; as a reasonable part may be tendered as security; or the debt may be paid into Court. *Curling v. Marquis of Townshend*. - - - XIX. 628

See *Account (Mesne Profits 2.) Costs (Trustees, &c. 3.) Election (Between Law and Equity 1.) Executor 14. 50. 63. Mortgage 49. Party 2. Practice 50. 58. 63. 92. 93. 166. 198. 228. 337. Principal and Agent 38. Sequestration 3. Theatre 3. Will 277.*

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### RECORD.

1. Distinguished from the books of the Bank.
1. Distinction between the books of the Bank of *England* and Records. - - - - - XVIII. 203
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### RECOVERY.

See *Decree 1. Equitable Recovery. Estate (For Years 1.) Fine 1. Power 39. Tenant in Tail 5.*

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### REDEMPTION.

See *Annuity. Assets 16. Copyhold 7. Laches 12. 13. Limitation (Time 18.) Mortgage 2. 22. 41. 51. 53. 56. 67.*

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See *Evidence 43. 44. (Witness 19. 21.) Practice 300.*

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REGISTER'S OFFICE.

- 1. Of the Court of *Chancery*: whether assignable.
- 2. Commitment for violence there, as a contempt.
- 1. *Quære*, Whether the office of Register of the Court of *Chancery* is assignable (a). - - - - -
- 2. The Court will commit a party guilty of an act of violence in the Register's Office, as a contempt. *Ex parte Burrows*. - - - - -

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See *Chancery*.

REGISTRY.

- 1. Notice against it must amount to actual fraud.
- 2. The acts only to protect purchasers.
- 3. Not vitiated by clerical mistake.
- 4. Of deed not affected without actual notice amounting to fraud.
- 5. Under the Annuity Act, not vitiated by clerical mistake.
- 6. Of deed, not affected by *lis pendens*.
- 1. A registered conveyance of premises in *Middlesex* for valuable consideration established against a prior devise not registered; the evidence of notice, which ought to amount to actual fraud, not being sufficient. *Jolland v. Stainbridge*. - - - - -
- 2. The object of the Registry Acts is only to protect subsequent purchasers. They have no effect therefore to vitiate the conveyance for want of registration as between the party, taking the conveyance, and him, who conveyed, or his assignees under a commission of bankruptcy. *Jones v. Gibbons*. - - - - -
- 3. Clerical mistakes do not vitiate Enrolment under the Registry Act. (See No. 5.) *Wyatt v. Barwell*. - - -
- 4. To affect a registered deed by notice of a prior unregistered deed, the policy of which has been much doubted, actual notice must be clearly proved, amounting to fraud. *Wyatt v. Barwell*. - - - - -
- 5. Notwithstanding the rigorous exactness, that has been required in Enrolments under the Annuity Act, clerical mistakes do not vitiate the memorial. (See No. 3.) -
- 6. *Lis pendens* not notice for the purpose of postponing a registered deed. - - - - -

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- SHIP.—
- 1. Of interest, derived under the party's own act and contract, not reformed.
  - 2. Whether the Acts affect trusts implied or by operation of law.
  - 3. Whether relief on fraud, preventing the indorsement on the certificate; and as to a distinction between ship and freight.
  - 4. Policy of the Acts.

(a) See Vol. V. page 433.

5. Sale of ship at sea valid in the case of bankruptcy before reaching port.
6. Distinction from the Annuity Act.
7. Public policy of the Acts.
8. Transfer void by not complying with the Acts.
9. No relief in Equity against the Acts: as to fraud *quære*.
10. { Conclusive evidence of property even against cre-
11. { ditors. Distinction between transfers by the act  
of the party, and by operation of law.

1. Where the interest in a ship is derived under the party's own act and contract, not executed according to the Registry Act, it cannot be reformed in equity any more than an annuity deed, not according to the Annuity Act. VI. 745
2. Whether the Ship Registry Acts, 26 Geo. 3. & 34 Geo. 3. have any effect upon trusts implied or arising by operation of law, *quære*. - - - - - VI. 746
3. Whether, the legal title under an assignment of a share in a ship failing under the Ship Registry Acts, 26 Geo. 3. c. 60; 34 Geo. 3. c. 68. for want of the indorsement upon the certificate within ten days after the return of the ship to port, if that was prevented by fraud, relief can be had in equity, in what form, and whether it may not be had as to the freight, if not as to the ship, though both were comprised in the same bill of sale, *quære*. *Mestaer v. Gillespie*. - - - - - XI. 621
4. Policy of the Ship Registry Acts. (See No. 7.) XI. 625. XV. 66
5. Sale of a ship at sea valid notwithstanding the bankruptcy of the vendor before her arrival in port, and therefore before the title is complete by the indorsement on the certificate of registry; if the other requisites of the Ship Registry Acts were previously complied with. - XI. 637
6. Distinction between the Ship Registry Acts and the Annuity Act, upon the public policy of the former. - XI. 639
7. Public policy of the Ship Registry Acts. (See No. 4.) XI. 642
8. Transfer of a share in a ship to another part-owner void by not procuring the indorsement upon the certificate within the time prescribed by the Registry Acts after the arrival of the ship. *Speldt v. Lechmere*. - - - XIII. 588
9. Transfer of a ship void to all intents and purposes, if the Registry Acts are not complied with; and no relief in Equity, as upon a defective conveyance. As to the case of fraud, *quære*. - - - - - XIII. 589
10. The registry of a ship is conclusive evidence of the property, upon the policy of the Registry Acts; even against the claim of creditors upon a joint purchase and various acts of apparent ownership, within the Bankrupt Act, 21 Jam. 1. c. 19. s. 11. Distinction between transfers by the act of the parties and by operation of law. *Ex parte Yallop*. - - - - - XV. 60
11. The registry of a ship is conclusive evidence of the property, even between creditors; excluding all trusts,

created by act of the parties; as, by payment of money on a purchase in the name of another. Distinction, as to trusts, arising by operation of law, upon bankruptcy or death. *Ex parte Houghton and Gribble.* - -

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See *Bankrupt (Reputed Owner 1.) Freight. Mortgage 15. Vendor and Vendee 17. 18.*

REGRATING.  
See *Contract (Illegal 11.)*

RE-HEARING.

- 1. } Not after appeal from the *Rolls*, which is a re-hearing;
- 2. } and therefore admits new evidence.
- 3. }
- 4. Only one, generally.
- 5. Of decree on default permitted on terms by Petition, not Motion.
- 6. Of course on certificate.
- 7. Of decree on default: security for the sum reported due required.

- 1. Petition of re-hearing, after an appeal from the *Rolls*, dismissed. *East India Company v. Boddam.* - - XIII. 421
- 2. Appeal from the *Rolls* is a re-hearing. - - - XIII. 423
- 3. New evidence on an appeal from the *Rolls*; being in truth a re-hearing. *Buckmaster v. Harrop.* - - XIII. 456
- 4. Generally, there can be only one re-hearing. - - XVI. 214
- 5. Decree on default; setting aside a lease of a Charity estate, with covenant for perpetual renewal; and directing an account of the annual rent. Re-hearing permitted on paying costs, not disturbing proceedings before the Master to the draft of a Report of what was due: but the money not to be paid into Court before the Report made. Petition, not Motion, the proper application. *Attorney-General v. Brooke.* - - - XVIII. 319
- 6. Re-hearing of course on the certificate of Counsel. - XVIII. 325
- 7. (See No. 5.) After the Order, permitting the defendant to re-hear the Decree made on his default, setting aside the Charity lease, and directing an account of the rents, he was ordered to give security for the sum reported due. *Attorney-General v. Brooke.* - - - XVIII. 496

See *Bankrupt. Practice 5. 133. 216. 220. 221.*

RELATION.

- 1. Various constructions in devise.
  - 2. Confined to the statute.
  - 3. Devise to relations to claim within a year.
- 
- 1. Various constructions of "relations" in devise. - - XIX. 301
  - 2. The word "relations," or "near relations," from their indefinite extent confined to the next of kin under the Statute of Distributions. - - - XIX. 403

## RELATION.—REMAINDER, ACCELERATED. 841

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3. Devise to relations to claim within a year established for those claiming within that period. - - - - XIX. 426

See *Annuity* 23. *Charity* 70. *Evidence* (*Pedigree* 5. 7.)  
*Next of Kin.* *Proximity of Blood* 1. *Representative.*  
*Trust* 113. *Vesting* 39. *Will* 101. 102. 207. 252. 253.

### RELATOR.

See *Charity* (*Costs* 1. 2.)

### RELEASE.

1. No answer to general assignee; if notice; though implied.
2. Of a debt. Reversion not included by the general terms.
1. Release after a general assignment no answer to the assignee, if notice. Defendant's knowledge, that assignee was on many occasions a trustee for assignor may be sufficient to affect him with notice. - - I. 43
2. Release of a debt. A reversion not included by the general terms. *Lord Braybroke v. Inskip.* - - - VIII. 417  
 See *Evidence* (*Presumptive* 4.)

### RELIEF.

See *Arbitration* 26. *Demurrer* 4. 20. *Legacy* 43. *Pleading* 26. *Practice* 144. 333. *Purchaser* 22.

### REMAINDER.

1. Particular estate considered for the sake of the remainder.
2. Husband of tenant for life ordered to produce her on application of the remainder-man and trustee under the Statute.
3. To the heir on failure of issue, not contingent, as purchaser: but a limitation of the reversion.
1. Particular estate considered to be given for the sake of the limitation over. - - - - I. 151
2. Tenant for ninety-nine years, if she shall so long live; remainder to trustees to preserve contingent remainders; remainder to the heirs of her body; remainder over to the same trustees upon trusts for other persons. Upon the application of those persons and the trustees under the Statute 6 Ann. c. 18, the husband of the tenant for life was ordered to produce her. *Ex parte Grant.* - VI. 512
3. Devise, after limitations in strict settlement, in default of such issue then to the devisor's next heir at law: a limitation of the reversion; not a contingent remainder to the heir, at the time of failure of issue, as a purchaser. *O'Keefe v. Jones.* - - - - XIII. 413

See *Apportionment* 2. *Copyhold* 13. *Cross Remainders.*  
*Equitable Recovery* 1. *Fine* 1. *Lease* (*Renewal* 2.)  
*Limitation.* *Tenant for Life* 1. 4.

### REMAINDER, ACCELERATED.

See *Resulting Trust* 3.

## REMAINDER, CONTINGENT.

See *Copyhold* 12. *Devise* 32. *Power (Appointment 14.)*  
*Purchaser. Trust* 115.

## REMAINDER IN TAIL.

See *Contribution* 1. *Decree* 1. *Pleading* 28. 29. 30. *Tenant in Tail*.

## REMAINDER-MAN AND TENANT FOR LIFE.

See *Copyhold* 17. 18. 19. (*Waste* 3.) *Estate (Conversion 20.)* *Lease (Renewal.)* *Representative* 16.

## REMAINDERS, CROSS.

See *Cross Remainders. Devise* 26.

## REMEDIAL STATUTE.

See *Statute* 2.

## REMITTER.

See *Revocation* 27.

## REMOTE LIMITATION.

See *Estate (Tail 5. 6. 7.)* *Executory Devise. Landlord and Tenant* 35. 36. *Perpetuity. Power (Appointment 10.)* *Trust* 107.

## RENEWAL.

See *Baron and Feme. Landlord and Tenant* 4. 5. 6. *Lease. Will* 265. 267. 296.

## RENT.

See *Apportionment* 1. 2. *Forfeiture* 6. 7. *Landlord and Tenant* 52. 57. *Mortgage* 41. *Occupancy* 3. *Will* 18. 51. (*Executory Devise.*)

## RENT-CHARGE.

See *Limitation (Time 6.)* *Party* 6.

## RENTS AND PROFITS.

1. Sale or mortgage under term to raise by rents, &c.
1. Term to raise by rents and profits: trustees may raise by sale or mortgage. - - - - -

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## RENTS AND PROFITS, ACCOUNT OF.

See *Charge* 11. 12. *Lien* 1. 3. *Limitation* 1. (*Time* 7.)  
*Will (Executory Devise 1.)*

## REPAIR.

1. Covenant for not executed: whether to build.
  1. Covenant to repair not executed by decree. Whether to build, *quære.* - - - - -
- See *Covenant* 8. *Forfeiture* 3. 6. 9. *Landlord and Tenant* 58. *Receiver* 15. 16.

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## REPORT.

See *Practice* 10.



REPORTS.  
See *Copyright 3.*

REPRESENTATIVE.

1. } No equity after party's death to convert or restore property.
  2. }
  3. }
  4. }
  5. }
  6. }
  7. }
  8. " Legal representatives according to the course of administration" in a Will held the next of kin.
  9. } Widow entitled under the Statute against an express bar of all dower or thirds, &c.: so a child against an express bar.
  10. }
  11. Issue entitled by that description: not the father, as administrator.
  12. Barred only by disposition.
  13. The character, as trustee, does not prejudice the right of retainer.
  14. No equity to convert the property.
  15. Liability by contract regulated by that of the deceased.
  16. Charge for land-tax redeemed without authority out of the personal estate of infant tenant in tail.
  17. Conversion of infant's property, so as not to change its nature as between representatives.
  18. Difficulty of arranging mixed partnership property no objection against the heir.
  19. } Widow and husband excluded from a bequest to "next of kin."
  20. }
  21. Resulting trust of property not exhausted.
  22. Distinction between limitation to executors or next of kin as to the right heirs or of a particular description.
  23. "Next of kin" referred to the death.
  24. Marital right excluded by limitation to the next of kin.
  25. Right of heir of lessee, purchasing under an option, against the executor.
  26. Husband not entitled as wife's next of kin or personal representative.
  27. Effect of a trust for lessee of a lease for lives, limited to heirs, and another to executors. Distinction as to renewal by guardian.
  28. Next of kin's right to residue in the absence of intention.
1. There is no equity between the real and the personal representatives after the death of a lunatic to have property, which was altered by the Court, restored: therefore the produce of timber on the estate of a lunatic cut and sold by order, on Report that it would be for his benefit, is personal assets. *Oxenden v. Lord Compton.*
  2. Real and personal representatives, being equally volunteers, must take what they find at the death of the

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|--|-----------|
| person entitled for life in the condition, in which they find it: there is no equity upon the subject (a). -   | II. 70    |
| 3. If a bailiff cuts timber without authority, and before it is sold the party dies, it is personal assets, and the heir has no action against the personal representative; nor is there any equity between them on the subject. -   | II. 74    |
| 4. As between real and personal representatives their rights are purely legal. Chance decides between them; and neither has any equity to convert the property (b). The intent of the testator is a consideration for devisees. -  | II. 176   |
| 5. A representative must take his interest as fortune has directed it, and has no equity to vary it (c); therefore where a lunatic dies entitled to an estate and also a charge upon it, the heir takes it discharged: a trust term to secure the charge makes no difference; for it remains inert, unless required to be executed for proper purposes: the trustees have no discretion. <i>Lord Compton v. Oxenden.</i> - - - - -   | II. 261   |
| 6. Testatrix directed her real estate to be sold and all her estate to be converted into money for the purposes of her Will; the Will was satisfied without touching the real; no equity for the next of kin against the heir. <i>Chitty v. Parker.</i> - - - - -  | II. 271   |
| 7. Testator gave real estates to be sold, and the produce to be considered as part of his personal estate; and there-out and out of his personal estate gave legacies to his next of kin, heir, and others; he gave other estates to be sold, and the produce to be considered from thenceforth as other part of his said personal estate, and to be disposed of in manner following: he then gave legacies, and some estates specifically, and other legacies out of his said trust monies and personal estate; and gave his executor £1000, to be disposed of according to any instructions he might leave in writing; and gave all the residue of his goods and chattels, personal estate and effects, whatsoever, subject to debts, legacies, &c. No instructions being found, the heir is entitled to the £1000. <i>Collins v. Wakeman.</i> - - - | II. 683   |
| 8. Money settled in trust to be paid according to the appointment of A. and in default thereof to his legal representatives according to the course of administration: A. by Will in pursuance of the power appoints to his legal representatives according to the course of administration; and makes a residuary legatee, whom he appoints one of his executors. <i>Upon the Will</i> the next of kin are entitled. <i>Jennings v. Gallimore.</i> - - -  | III. 146  |

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(a) See the notes, Vol. II. page 78. 176.  
 (b) See the note.  
 (c) See the notes, Vol. II. page 78. 176.

9. Testator gave his wife real and personal estate in bar, full satisfaction, and recompense of all dower or thirds, which she can have or claim in, out of, or to, all or any part of his real and personal estate, or either of them: he gave the residue to four persons; and afterwards by a codicil he directed them to dispose thereof in charities: part of the residue, being invested in real securities, goes according to the *Statute*, as undisposed of; and the widow is not barred. *Pickering v. Lord Stamford.* III. 332. 492
10. Testator gave real and personal estate to one daughter in satisfaction of her child's part of whatsoever more she might have expected from him or out of his personal estate; he also gave a provision to his wife in full of her dower, thirds, or other claim at law or in equity, or by any local custom, to any other part of his real or personal estate: the residue to his other daughter: upon her death in his life he by codicil gave it according to the appointment of his wife: the power not being duly executed, the residue goes according to the *Statute*, as undisposed of; and the widow and daughter are not barred. - - - - - III. 335
11. Devise to *A.* and his wife for life; and after the death of the survivor upon trust to sell and apply the produce to and among all and every the issue child or children of *A.* by his said wife and their representatives equally: the fund belongs to the children, surviving the testator: but the issue of a daughter, who died in the life of *A.* are entitled as representatives against the claim of their father, as administrator. *Horsepool v. Watson.* - - - - - III. 383
12. Neither an heir at law nor next of kin can be barred by any thing but a disposition. - - - - - III. 493
13. A right of retainer is not prejudiced by the circumstance, that the administration is granted to another for the use of the creditor, a lunatic, any more than if *durante minoritate*; nor, that the debt is due to a trustee. *Franks v. Cooper.* - - - - - IV. 763
14. No equity between the heir or devisee and personal representative to convert property from the state, in which it is found at the death (*a*). - - - - - V. 303
15. Liability of real and personal representatives in respect of a contract regulated by that of the party at his death. If he could not be compelled to take the estate, the heir cannot insist on having it, and that the personal estate shall pay for it. - - - - - X. 607
16. Application of the personal estate of infant tenant in tail to the redemption of the land-tax by persons, not having authority within the Act. Equity, by analogy to the option, to be reserved by guardians, &c. under the Act, for the personal representative of the infant to charge

(a) See the note, Vol. V. page 304.

	the estate in the possession of the remainder-men.	Vol. Page
	<i>Ware v. Polhill.</i> - - - - -	XI. 257
17.	Conversion of the property of an infant for his benefit guarded so as not to change the nature of it as between the representatives. - - - - -	XI. 278
18.	Partnership property of different natures, partly real, partly personal. The difficulty of disentangling and arranging it is no objection against the heir. - - -	XI. 665
19.	Residuary clause, "to be divided amongst my next of kin as if I had died intestate:" a bequest to the next of kin; as they would take under an intestacy; and the widow is not one of the "next of kin" in the ordinary sense; or in the sense, in which the testator used the words. <i>Garrick v. Lord Camden.</i> - - - - -	XIV. 372
20.	<i>Primâ facie</i> bequest by a husband to his next of kin does not include his wife: nor does a similar bequest by a wife under a power include her husband. (See No. 26.) - - - - -	XIV. 382
21.	General devise and bequest upon trusts, not sufficient to exhaust the whole property; a resulting trust for the heir and next of kin. - - - - -	XV. 416
22.	Distinction between a limitation to the executors and administrators and to the next of kin: as between a limitation to the right heirs, and to heirs of a particular description, as to real estate; giving the ancestor, having a particular estate, the whole property in the former case; not in the latter. - - - - -	XV. 536
23.	The description "next of kin" means at the death. -	XV. 536
24.	The marital right of the husband, as administrator by law, excluded by a limitation to the next of kin of the wife. - - - - -	XV. 537
25.	Lessee for years, with an option at certain periods to purchase, making that option, was considered owner <i>ab initio</i> , for the benefit of the heir: the price to be paid by the executor. - - - - -	XVI. 253
26.	Under a limitation in a marriage settlement of the wife's property, in default of her appointment, for her next of kin or personal representative, the husband not entitled. <i>Bailey v. Wright.</i> (See No. 20.) -	XVIII. 49
27.	One lease for lives to the lessee and her heirs, and another to her and her executors: as to the effect in equity of a declaration of trust for <i>A.</i> simply, <i>quære</i> : but, if the leases were merely renewals by a guardian, the trust must follow the actual interest of the infant, viz. in one estate to the heir, in the other to the executor. - - - - -	XVIII. 274
28.	Right of the next of kin to the residue undisposed of not under testator's intention, but by the absence of intention that they are not to take. - - -	XIX. 485

See Answer 1. Assets. *Baron and Feme* 28. Bill to perpetuate Testimony 2. Charity 1. Devise 16. Estate

## REPRESENTATIVE.—RESIDUE.

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(Conversion 11.) *Executor. Exoneration. Fraud* 22.  
*London, Custom of, 1. Lunacy* 9. 69. *Money to be in-*  
*vested* 6. *Residue* 8. *Resulting Trust. Trust* 43.  
*Will* 1. 118.

## REPUBLICATION OF WILL.

See *Devise. Will.*

## REPUGNANCE.

1. Terms, repugnant to the interest, to be rejected. - - XIV. 413

See *Will* 98. 107. 281.

## REPUTATION.

See *Evidence (Pedigree* 2. 6.)

## REQUEST.

See *Trust* 99.

## RE-SEALING COMMISSION.

See *Bankrupt (Commission* 32. 33.)

## RESIDENCE ABROAD.

See *Alien (Enemy.)*

## RESIDUARY BEQUEST AND DEVISE.

See *Election* 18. *Executor. Exoneration* 5. *Lapse* 3.  
*Legacy* 51. 52. *Representative* 8. *Will* 235.

## RESIDUE.

1. Residuary bequest in general terms, with a subsequent bequest of debts to the same person.
  2. How far residuary clause indicates intention.
  3. } Undisposed of; right of executor or next of kin.
  4. }
  5. Residuary disposition held general.
  6. Bequeathed carries interest; though the legatee dies before time of payment.
  - (a)
  8. Comprehends all not disposed of, by lapse, or as void.
  9. Undisposed of decreed to trustees, also executors.
  10. }
  11. { All, not meant to be disposed of, goes to executor:
  12. { not a surplus not exhausted by the trust: not lapse.
  13. }
  14. Distinguished on the description.
  15. Not specific without clear intention.
1. Bequest of "all other unbequeathed goods and chattels" is residuary; notwithstanding a subsequent bequest to the same person of debts due to the testator. *Bennet v. Batchelor.* - - - - - I. 63
2. Residuary clause is a mark of intention; but not sufficient ground to say, it was absolutely the intent there should be something to satisfy it. - - - - - I. 151

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(a) No. 7, omitted.

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3. Executor is entitled to an unbequeathed residue; unless there is a strong and violent presumption against him: a legacy to him affords such presumption; but parol evidence of the intention is admissible to rebut that; and is not to be confined to the time of making the Will: but it must be to shew the intention at that time only. *Clennell v. Lewthwaite.* - - - - - II. 465. 644
4. Residue unbequeathed decreed to the executor, who was a legatee, upon the intention appearing in the Will and by parol evidence. *Clennell v. Lewthwaite.* - - - II. 465. 644
5. Construction of a residuary disposition, as embracing the general, and not limited to a special, residue. *Crooke v. De Vandes.* - - - - - IX. 97
6. Bequest of a residue, payable at a future time, carries interest; though the legatee does not live to receive the principal. - - - - - IX. 289
- (a)
8. The general residue of personal property comprehends every thing, not otherwise effectually disposed of; and no difference, whether a legacy falls into it by lapse, or as void at law: the next of kin therefore excluded by an express bequest of the residue. - - - - - XV. 416
9. General devise and bequest to two persons, their heirs, executors, administrators, &c. upon trust in the first place to pay, and charged and chargeable with, all the testator's debts and funeral expenses, and the legacies after given. Those persons, being afterwards appointed executors, taking the absolute property, subject only to a charge, are entitled to the residue undisposed of, (including a legacy to a charity, void by Stat. 9 Geo. 2. c. 36,) for their own benefit, against the claim of the next of kin; the whole property being personal. Upon their right, as executors, *quære.* *Dawson v. Clarke.* - XVIII. 247
10. Executor takes all, not meant to be disposed of; not all that is not disposed of; as in the case of a lapse; or being appointed executor in trust, and no object expressed. (See Nos. 11. 13.) - - - - - XVIII. 254
11. Personal property bequeathed upon trust, which does not exhaust the whole: the executor not entitled to the surplus. (See Nos. 10. 13.) - - - - - XVIII. 255
12. Devise and bequest upon trust: the devisee cannot take beneficially the real estate not exhausted: but a trust results for the heir; nor can the executor, whether himself the trustee or another, take beneficially the surplus of the personal property. - - - - - XVIII. 255
13. In the ordinary case of lapse the executor will not take; though the subject is not given to any one else. (See Nos. 10. 11.) - - - - - XVIII. 255

## RESIDUE.—RESIGNATION OF THE GREAT SEAL. 649

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| 14. Distinction between the bequest of a residue and of enumerated parts with the words "personal estate" not described as residue. - - - - -               | XIX. 523  |
| 15. Residuary bequest of the personal estate not hereinbefore specifically disposed of not specific without a clear indication of that intention. - - - - - | XIX. 532  |

See *Devise* 27. *Executor* 36. 37. 39. 40. 41. 55. 56. 57. 58. 60. 79. 81. 88. 89. *Interest* 24. *Joint Tenant* 4. *Legacy* 23. *Party* 24. *Practice* (Party 3.) *Resulting Trust* 1. *Satisfaction* 23. 38. 39. *Stock* 5. *Trust* 14. 20. 21. 59. 74. 75. (*Resulting* 1. 2.) *Will* 17. 171. 172. 173. 262. 303.

## RESIGNATION BOND.

- |  |           |
|--|-----------|
| 1. Questioned.   |           |
| 2. In favor of a particular person ; and whether to be considered on the principle of marriage-brocage, or as corrupt.   |           |
| 3. General bad.  |           |
| 1. Legality of resignation bond questioned. - - -  | VIII. 61  |
| 2. As to the validity of a bond of resignation of a Living in favour of a particular person, and not to accept a Bishoprick (the latter not directed by the Will); and whether to be considered upon the principle of marriage-brocage bonds, as against policy, or as a corrupt transaction, with reference to which the Court would not act, <i>quære. Dashwood v. Peyton.</i> - - - | XVIII. 27 |
| 3. General bond for resignation of a Living bad. - - -   | XVIII. 37 |

## RESIGNATION OF LIVING.

- |   |          |
|---|----------|
| 1. Qualification, that the person to be presented should not at the time be presented, &c. into another Living, complied with by previous resignation.  |          |
| 2. Sufficient, though no public act.  |          |
| 3. A domestic, not judicial, act.   |          |
| 1. Qualification in the grant of a Living, that the person, to be presented, should not at such time as the Church should be void "be presented, instituted, or inducted, "into any other Living," complied with by previous resignation of another living. <i>Heyes v. Exeter College.</i> - - - - - | XII. 336 |
| 2. Resignation of a Living, sent by the post to the Bishop, who indorsed and signed a memorandum of his acceptance, sufficient; though no public act. <i>Heyes v. Exeter College.</i> - - - - -   | XII. 336 |
| 3. Acceptance by the Bishop of resignation not a judicial, but a domestic, act. - - - - -   | XII. 345 |

## RESIGNATION OF THE GREAT SEAL.

See Vol. I. 485. II. 61. V. 870. XI. 667 a. XIII. 510.



## RESTRAINING STATUTE.

See *Lease* 1.

## RESTRAINT OF TRADE.

See *Theatre* 5.

## RESTRICTION.

See *Construction* 3.

## RESTS.

1. From year to year.

1. Rests from year to year; not from a particular period of the account. - - - - -

II. 257

See *Executor* 51. *Mortgage* 58. *Practice* 260.

## RESULTING TRUST.

1. Of residue for the next of kin.

2. On death before the time of vesting.

3. Until the devisee is to take; and on his previous death the remainder accelerated.

1. Executor held a trustee for the next of kin of the residue undisposed of upon a legacy against an argument upon the Will opposing the presumption. *Abbott v. Abbott.*

VI. 343

2. Bequest of accumulated fund from real and personal estate, when the legatee attains twenty-one, upon his death under that age a resulting trust for the respective representatives. *Chambers v. Brailsford.* - -

XVIII. 368

3. Devise, when the devisee attains twenty-one, a resulting trust for the heir until that period; and by the previous death of the devisee the remainder accelerated.

*Chambers v. Brailsford.* - - - - -

XVIII. 368

See *Baron and Feme*. *Charity* 6. 27. *Estate (Conversion* 12. 13.) *Evidence* 13. *Executor* 22. *Heir* 9. *Representative* 9. 10. *Residue* 12. *Trust* 20. 40. 41. 48. 53. 54. 55. 56. 57. 123. *Use* 5. *Will* 120.

## RETAINER.

1. Out of legacy to co-executor on *devastavit*.

1. Retainer allowed to one executor out of a legacy to his co-executor in respect of a *devastavit*. *Sims v. Doughty.*

V. 243

See *Baron and Feme* 42. *Counsel* 3. *Representative* 13.

## REVERSION, SALE OF.

1. Sale set aside for mere inadequacy, &amp;c.; as in the case of expectant heir.

2. Jurisdiction as to valuation.

1. The sale of a reversionary interest, in this Court considered as the case of an expectant heir, forms an exception to the general rule, that for mere inadequacy of value a contract is not to be set aside. During the continuance of the same situation acquiescence has no effect; and the value is to be estimated at the time of the

## REVERSION.—REVIEW, BILL OF.

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transaction: not according to the event. Interest at 5 per cent. upon the money advanced. Compound interest refused (a). *Gowland v. De Faria.* - - - XVII. 20

Jurisdiction as to the valuation of reversionary uncertain interests, depending on lives. - - - - - XVIII. 311

See *Attorney and Solicitor.* -(*Attorney and Client* 14.)  
*Copyhold* 13. *Heir.* *Release* 2. *Remainder* 3. *Tenant* 1.

## REVERSIONARY TERM.

See *Portion* 3. 6.

## REVIEW, BILL OF.

1. May be also for Revivor and Supplement.
2. Error must be plain.
3. Whether the Bill may be in the alternative for Revivor and Supplement; if the Decree is not enrolled; or in nature of Review on error apparent, or matter of law to be collected, supplemental Bill being required only for new facts, to come on with Re-hearing.
4. On newly discovered facts by leave.
5. Distinction of Bill of Review from Supplemental in nature of it.

Bill of Review may be also a Bill of Revivor and Supplement. *Perry v. Phelps.* - - - - - XVII. 173

Error apparent, to support a Bill of Review, must be plain and obvious; as a Decree against an infant without a day to shew cause: not merely an erroneous judgment; which might be the subject of a re-hearing. *Perry v. Phelps.* - - - - - XVII. 173

Whether a Bill can be maintained as a Bill of Review, in case the Decree should have been enrolled, or, if not, as a Bill of Revivor and Supplement, with a prayer in the alternative, adapted to either case; whether there is any instance of a Bill in the nature of a Bill of Review upon error apparent, or matter of Law, to be collected from the pleadings and evidence, a Supplemental Bill being required only to introduce new facts, to come on with a re-hearing of the original cause, *quære.* *Perry v. Phelps.* - - - - - XVII. 173

For a Bill of Review on newly discovered facts the leave of the Court necessary. - - - - - XVII. 173

Distinction between a Bill of Review and a Supplemental Bill in nature of it. If the Decree is enrolled, it is strictly a Bill of Review; and prays, that the Decree may be reviewed and reversed: if not enrolled, the prayer is, that the cause may be re-heard. In either matter of supplement or revivor may be introduced, with the proper prayer. - - - - - XVII. 177

(a) See the note, Vol. XVI. page 518.

REVIEW, COMMISSION OF.  
See *Will* 139. 143. 176. 211.

REVIVOR.

1. When by defendant. Not merely to dissolve an Injunction against proceeding at law.
2. Distinction, when Supplemental Bill necessary.
1. Defendant cannot revive, except after a Decree to account, or where the defendant has some interest in the farther prosecution of the suit: not therefore where his only object was to dissolve an Injunction, and proceed at law. *Horwood v. Schmedes.* - - - - XII. 3
2. Upon the marriage of a female plaintiff Revivor alone will not do; where the interests of third persons, viz. trustees and the Issue, must be brought forward; making a Supplemental Bill necessary: but a Motion to stay an Attachment for want of Answer was refused; being made with consent of the husband, in the face of his covenant to permit the suit to be revived and prosecuted by the trustees in his name for the benefit of the family. *Merrewether v. Mellish.* - - - - XIII. 1

See *Bankrupt* (Abatement 4.) *Costs* 9. 10. 13. 21. *Practice* 129. 130. 247. 265. (*Party* 12.) *Review* 1. 3. 5.

REVOCATION.

1. By conveyance, going beyond a mere mortgage. Effect of laches.
2. At law by conveyance of the whole estate: whatever the purpose; except partition.
3. }
4. { At Law and in Equity distinguished. Partition anomalous.
5. {
6. {
7. }
8. Not when no such intention appeared; and a power of revocation not complied with.
9. Not by second marriage, and children, provided for by settlement; and children by the former marriage.
10. By an act accidentally failing.
11. } Parol, before the Statutes of Frauds and as to guar-
12. } dians.
13. Not by another Will, intended, but failing, as a substitution, its only object.
14. By act, failing only from disability of the person, &c.
15. By instrument, ineffectual for want of attestation, or by accident.
16. Parol before the Statute: not adopting the *Civil Law* in its full extent; but distinguishing between framing and revoking Wills.
17. Feoffment without livery; and bargain and sale without enrolment.
18. By another perfect Will: not, if defective.

## REVOCATION.

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19. Not, though express; if subservient to another purpose, for which it is incompetent.
  20. Rule of the *Civil Law*.
  21. In Equity by agreement for partition.
  22. Not by mere partition: but the slightest addition sufficient.
  23. Total not controlled by a limited purpose.
  24. At Law and in Equity distinguished.
  25. By exchange; though failing through defect of title.
  26. By partition; if any farther object.
  27. Not by disseisin and remitter by entry.
  28. By conveyance for jointure.
  29. } By contract for sale. Whether abandonment of it
  30. } would alone set up the Will again.
  31. }
  32. Express on marriage not restored by a general residuary disposition.
1. Devise of fee-farm rents revoked in equity as well as at law by a subsequent conveyance to a trustee, operating an alteration of the estate beyond the mere purpose of securing a mortgage: but on account of the laches of the plaintiffs, the heirs at law, the *Master of the Rolls* would not assist them farther than by retaining the bill; with liberty to bring such action or suit as they may be advised; to give an opportunity of taking the opinion of a Court of Law upon the question, whether there is a revocation at law; or, whether a Court of Law will presume re-publication from the long possession; leaving open the question, whether the plaintiffs are entitled to any account, or how far back. Upon an appeal from the Decree at the *Rolls*, the *Lord Chancellor* was of opinion, that the devise was revoked in equity as well as at law; and that the fee-farm rents, by the effect of the revocation descending to the heir, were not applicable to the debts before the other real estates devised, with the exception of a part, upon a special trust for that purpose by sale; but, that the Decree, deciding that the parties ought to go to law, ought to have directed the specific proceeding. The title however not appearing correctly upon the pleadings, inquiries were directed. *Harmood v. Oglander*. - - - VI. 199. VIII. 106
  2. Wherever the whole legal estate is conveyed, whether for a partial or general purpose, with the single exception of the case of partition, a Court of Law has nothing to do with the purpose; but is to see, whether the interest remains the same in the deviser as at the date of the Will: if not, whether the purpose is partial or general, by way of charge, or not, it is a revocation at law. - - - - - VI. 218
  3. The question in a Court of Law as to the revocation of a Will is only, whether the legal devise is revoked by the deed. All other questions as to the partial pur-

- |     |  |                      |
|-----|--|----------------------|
|     | pose, &c. are merely equitable questions. The case of partition is anomalous. - - - - -  | Vol. Page<br>VI. 219 |
| 4.  | Where the deed, clearly revoking the Will at law, is only for the partial purpose of introducing a particular charge or incumbrance, and does not affect the interest of the testator beyond that purpose, it is only a partial revocation in equity; and though, after that purpose is answered, the use is declared for the testator and his heirs, a Court of Equity will hold the party a trustee for the devisees: so upon a devise of an equitable estate, and a subsequent conveyance of the legal estate to the devisor and his heirs. - - - - - | VI. 219              |
| 5.  | Devise not revoked in equity by a mortgage in fee for payment of debts; though, after the debts are paid, the devisor takes a conveyance to him and his heirs. -   | VI. 221              |
| 6.  | Any alteration of the estate, or a new estate taken, is at law a revocation, whether for a partial or a general purpose; to which a Court of Law cannot advert; neither ought they to take any notice of articles or covenants, charging the estate in equity; but only to say upon the Will and the subsequent deed, whether the old estate is changed, and a new estate acquired. - - - - -  | VI. 222              |
| 7.  | Equity never controls the law upon revocation, except where the beneficial interest, being distinct from the legal estate, is devised, and the devisor afterwards takes the legal estate, without any new modification or alteration: 2dly, where, having the complete legal and beneficial estate at the date of the Will, he divests himself of the legal estate; but remains owner of the equitable interest; as in the case of a mortgage or a conveyance for payment of debts. - - - - -  | VI. 223              |
| 8.  | Settlement of leasehold estates not revoked by a subsequent assignment by the trustee to the settlor, entitled for life, or by the Will of the latter, no intention to revoke appearing; and the terms of a power of revocation not being complied with. <i>Ellison v. Ellison.</i> - - -  | VI. 656              |
| 9.  | A second marriage and the birth of children, the wife and children provided for by settlement, and there being children by the former marriage, a case of exception from the rule, that marriage and the birth of a child revoke a Will. <i>Ex parte The Earl of Ilchester.</i> -  | VII. 348             |
| 10. | An act inconsistent with the Will, though by some accident, independent of the Will, it fails of effect, is a revocation; as a covenant to make a feoffment and letter of attorney to make livery; but no livery made. -   | VII. 370             |
| 11. | Parol revocation of Will before the Statute of Frauds. -   | VII. 371             |
| 12. | Previously to the Statute of Frauds and that as to guardianship any declaration, from which an intention to revoke could be collected, was sufficient. - - - - -   | VII. 371             |
| 13. | Disposition by Will, so as to have legal effect, and afterwards another, by which the former would be revoked,   |                      |

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- but the other substituted ; and it is evident, the testator did not intend revocation for any other purpose than to give it effect: if the second instrument cannot have the effect of disposition, it shall not be a revocation. - VII. 372
14. Where the act is valid for the whole purpose, but by disability of the person to take, or some matter *dehors* or subsequent to the Will it is ineffectual, it is a revocation. VII. 373
15. A Will may be revoked by an instrument, not attested as would be required to give it effect. Any disposition, that would by the instrument have completely put an end to that Will, shall have that effect, though the instrument becomes ineffectual by any accident or circumstance *dehors* the Will. - - - - - VII. 374
16. The rule of the *Civil* Law required the same solemnity to annul an instrument, that was necessary to its completion: relaxed by *Justinian* in certain cases as to the revocation of a Will. The rule never adopted in its full extent in this country. Parol revocation of a Will good before the Statute of Frauds. Parol revocation of agreements. Different solemnities by that Statute for the framing and the revocation of Wills. - - - VII. 376, 7
17. Ground of the cases of feoffment without livery and bargain and sale without enrolment as to the revocation of a Will. - - - - - VII. 378
18. A perfect and complete Will, inconsistent with the former, is a revocation; though the devisee may never derive benefit from it: otherwise, if defectively executed and incapable as a Will. - - - - - VII. 379
19. An express revocation, if only subservient to another purpose, for which it is incompetent, shall not revoke. VII. 379
20. Rule of the *Civil* Law: "*Tunc prius testamentum rum-  
pitur, cum posterius perfectum est.*" - - - VII. 380
21. The effect of revocation in equity produced by an agreement for partition in such a manner as to deprive the testatrix in equity of any interest in the estate devised; and the devisee disappointed has no right to compensation from the heir. The agreement good to this effect, though it cannot be precisely executed; admitting compensation: Whether, if abandoned, the Will is set up again; *quære. Knollys v. Alcock.* - - - VII. 558
22. Mere partition, whether by compulsion or agreement, is not a revocation of a Will: but the slightest addition, as a power of appointment prior to the limitation of the uses, is sufficient. (See No. 26.) - - - VII. 564
23. Codicil, reciting a specific and limited purpose, revokes the whole devise, declaring the trusts again, with the proposed alteration; and confirms the Will in every particular not thereby altered or revoked. The omission of one trust, though probably against the intention, cannot be supplied. *Holder v. Howell.* - - - VIII. 97

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24. No instance of a revocation of a Will at law being held not a revocation in equity, where the partial, particular, purpose was not for charges, or incumbrances, or to pay debts. - - - - - VIII. 126
25. Revocation of a devise by an exchange; though the land after the death of the devisor was restored to his heir under an arrangement in consequence of a defect discovered in the title of the other party to the exchange. *Attorney-General v. Vigor.* - - - - - VIII. 256
26. The ground, upon which a partition does not revoke a devise. If the object is to do any thing beyond mere partition, it is a revocation. (See No. 22.) - - - - - VIII. 281
27. Disseisin and remitter by entry no revocation. - - - - - VIII. 282
28. Devise revoked by a conveyance to trustees and their heirs to secure a jointure, and, subject to a term for that purpose, to the devisor, and his heirs, with a covenant to surrender copyhold estates to the same uses. *Vauzer v. Jeffrey.* - - - - - XVI. 519
29. Revocation of devise by a contract for sale, though rescinded after the devisor's death. *Bennett v. Earl of Tankerville.* - - - - - XIX. 170
30. A binding and valid contract for the sale of lands devised is in equity as much a revocation as a conveyance would be at law. - - - - - XIX. 178
31. Whether the abandonment of a contract for sale of devised estates in the devisor's life would set up the Will again without republication, *quære.* - - - - - XIX. 179
32. Trust by Will to permit testator's wife to receive interest and rents for life, for the maintenance of herself and children, and in case of her marriage that the interest, &c. shall not be paid to her any longer, but be applied by his executors and trustees (she being an executrix with them) for maintenance of the children, revoked on her marriage; and not restored by a general residuary disposition to her. - - - - - XIX. 396

See Contract 75. Devise 30. Guardian 3. Partition 4. Power 8. 25. (Appointment 41.) (Of Attorney 1.) Purchase 11. Settlement 1. 7. Specific Devise, &c. 1. Will 284. 287.

### RIGHT OF WAY.

See *Premption* 11.

### RING.

See *Evidence* 77. (*Pedigree* 4. 6.)

### ROAD BOOK.

See *Copyright* 2. 14.

### ROMAN CATHOLIC.

See *Mortmain* 2.

## ROYAL FAMILY PRIVATEERS.

See *Laches* 14.



## ROYAL MINE.—SATISFACTION.

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### ROYAL MINE.

See *Mine* 2.

### RULE.

See *Practice* 27.

### SALE.

See *Charge* 4. *Power* 23. 24. *Purchase*.

### SALE BY AUCTION.

See *Auction*. *Contract* 9. 10. 27. (*Specific Performance* 33.)

### SALE OF THE COMMAND OF AN EAST INDIA SHIP.

See *Contract* (*Illegal* 8.) *East India Ship* 1. *Pleading* (*Demurrer* 19.)

### SALT WORKS.

See *Vendor and Vendee* 15.

### SATISFACTION.

1. Payment from a society for annuities to the wives of the members not a satisfaction of husband's covenant for an annuity in lieu of all claim on his personal estate.
2. }
3. }
4. } Of legacy by portion.
5. }
6. }
7. }
8. Of portion by legacy.
9. Or election requires clear intent.
10. Of covenant to purchase by lands descending.
11. Not presumed without intent.
12. Of covenant to leave by an equal or greater sum descending.
13. Of debt or portion by legacy.
14. Of settled, by testamentary, portion. Accounts evidence, not to explain, but of circumstances, under which the Will was made.
15. Of debt by legacy.
16. Of settled, by testamentary, portion.
17. Not of negotiable bill by legacy.
18. Of debt by legacy.
19. Not of legacy by advancement in infancy and a legacy by the executor's Will, larger, but of a different nature.
20. Not of covenant on marriage by the widow's share under the Statute.
21. Of debt by legacy.
22. Of settled, by testamentary, portion.
23. Of legacy by portion. Distinction of residuary bequest.
24. Action permitted, not directed, on presumed satisfaction in a hard case.
25. Of debt by legacy from parent to child.
26. Of legacy by portion.

- clearly not so intended: the presumption is not rebutted by slight circumstances: accounts in the testator's handwriting were admitted as evidence of the circumstances, under which he made his Will; but not to explain the Will. *Hinchcliffe v. Hinchcliffe*. (See Nos. 16. 22.) III. 516
15. The Court will lay hold of any circumstances to get out of the rule, that a debt is satisfied by an equal legacy. (See Nos. 13. 18. 21.) - - - - - III. 529
16. Portions for children by the Will of the parent held a satisfaction of a provision by settlement upon the intention: slight circumstances of difference, that would repel the presumption of satisfaction between strangers, are not sufficient in the case of parent and child. *Sparkes v. Cator*. (See Nos. 14. 22.) - - - - - III. 530
17. A negotiable bill of exchange not satisfied by a legacy. *Carr v. Eastabrooke*. - - - - - III. 561
18. Nothing presumed in favour of the rule, that a debt is satisfied by a legacy equal or greater. (See Nos. 13. 15. 21.) III. 564
19. Legacy at twenty-one, the interest for maintenance, not satisfied by advancement during minority for the infant's benefit; nor by a legacy larger, but of a different nature, received under the Will of the executor: there being no positive relinquishment; though no demand for ten years. *Lee v. Brown*. - - - - - IV. 362
20. Settlement previous to marriage of the wife's fortune on herself, with a covenant by the husband in consideration of the marriage, &c. and for making some provision for the wife and her issue, to pay within three months after his death £6,000 to the trustees, in trust, if the wife should survive him, and there should be no issue, (which was the event) to pay £1,500 to the wife, her executors, &c. and to pay the interest of the remaining £4,500 to her for life. She is entitled to dower: and her share under the Statute of Distributions is not a satisfaction or performance of the covenant. *Couch v. Stratton*. - - - - - III. 391
21. As to a presumed satisfaction of a debt by a legacy there is no distinction between the cases of parent and child and of strangers; therefore circumstances of difference, as that the legacy given by the parent is contingent, are laid hold of to prevent the application of the rule of satisfaction. *Tolson v. Collins*. (See Nos. 13. 15. 18.) IV. 483
22. Portion by Will *prima facie* a satisfaction of a portion by settlement. - - - - - IV. 491
23. Distinction between a legacy and a residuary bequest as to a presumed satisfaction by the advancement of a portion. The presumption as to the former does not arise as to the latter; and parol evidence of an intention to satisfy cannot be admitted originally; as it may, where first introduced to repel a presumption. *Freemantle v. Bankes*. (See Nos. 3 to 7. 26.) - - - V. 79

Upon a question of presumption of satisfaction in a hard case the Court gave the executors leave to bring an action upon the bond: but would not direct it. <i>Reeves v. Brymer.</i> - - - - -	VI. 516
A son placed by his father in business, accounting to his father for all the profits, deducting only the expense of his board, having made no demand for wages during his father's life, was held not entitled as a creditor after his father's death; or, if he had a demand, it was satisfied by a Will, giving him a legacy to a greater amount, and other benefits. <i>Plume v. Plume.</i> - - - - -	VII. 258
Presumed satisfaction of a legacy by a portion: the evidence not being sufficient to rebut the presumption. <i>Trimmer v. Bayne.</i> - - - - -	VII. 508
Distinction as to satisfaction between the case of double portions and performance of a covenant. In the former small circumstances of difference are overlooked. -	VII. 515
Gift of £500 by a father to his daughter not a satisfaction in part of a legacy of £1000 by a previous Will: the presumption against double portions in the case of parent and child being repelled by the circumstances: the gift not by way of portion; being after the marriage; and a particular motive appearing by declarations of the testator to his wife, proved by her. <i>Robinson v. Whitley.</i>	IX. 577
Covenant in marriage settlement by the husband in the event of his death, leaving his wife surviving and children, within six months after his decease to convey, pay, assign, &c. one full and clear moiety of all such real and personal estate as he shall be seised and possessed of, or entitled to, at his decease. Upon the principle of part-performance the widow not entitled, in addition to the moiety under the covenant, to a third of the residue of the personal estate by the intestacy of her husband. The personal estate, upon which the covenant attaches, is the residue, subject to the debts. <i>Garthshore v. Chalie.</i> - - - - -	X. 1
Covenant to purchase and settle upon the first and other sons in tail male: a purchase of less, equal, or greater, value, and the conveyance taken in fee, held in performance and satisfaction. - - - - -	X. 9
Covenant by husband to leave or pay at his death to a person, independent of that engagement entitled by law to a provision: the construction is to be with reference to that; and the slight difference between leaving and paying, or, whether within three or six months, not attended to. - - - - -	X. 13
Provision by Will in bar of dower and thirds does not bar the widow from taking under an intestacy, by the failure of a legacy. Distinction upon a marriage agreement. -	X. 17, 18
Portions by settlement for younger children, living at the death of the survivor of the parents; with a proviso,	

that advancements should be in satisfaction, unless the contrary declared. The father by Will, desiring the settlement may be punctually complied with, made a residuary disposition of real and personal estates among the younger children, directing, that what they may have received in his life shall be brought into the account, so as to make all equal. Construction upon the whole, that advancement in marriage, *or otherwise*, though not the grammatical construction, is within the proviso; and, equality being the object, an arrangement was made upon that principle. One of the younger children having become the eldest, and therefore owner of the estate, between the deaths of the parents, after advances received in satisfaction of the portion in the former character, to be considered a younger child in the account. *Leake v. Leake.* - - - - -

- |     |  |         |
|-----|--|---------|
|     |  | X. 4    |
| 34. | Parol evidence admitted, and prevailed, against the presumption, that a debt is satisfied by a legacy of greater amount; the Will also affording an inference in favour of that presumption. <i>Wallace v. Pomfret.</i> - - -  | XI. 5   |
| 35. | Parol evidence admitted upon the question as to satisfaction of portions. - - - - -  | XI. 6   |
| 36. | Though generally a satisfaction by Will of a portion must be of the same nature, and equally certain, a bequest of a share in powder-works, to be made up in value £10,000, charged with an annuity of £20 for a life, was held a satisfaction of a portion of £2,000. <i>Bengough v. Walker.</i> - - - - -  | XV. 1   |
| 37. | Land not a satisfaction for money; nor money for land: not being <i>ejusdem generis.</i> - - - - -   | XV. 1   |
| 38. | As to satisfaction of a portion by a residue. - - - - -  | XV. 1   |
| 39. | Whether a portion of £2,000 would not be satisfied by a bequest of so much of his residuary estate as should be of the value of £2,000, <i>quære.</i> - - - - -  | XV. 1   |
| 40. | Satisfaction of a legacy by a parent to a child by a portion of the same amount, though with some circumstances of difference. Whether parol evidence can be admitted originally of an intention to substitute the one provision for the other, or only where it is first offered against the presumption, it is clearly admissible to shew, that the father was the author of the portion: viz. by stipulating on joining in the marriage settlement of his eldest son for a charge, and giving up interests in consideration of it. <i>Hartopp v. Hartopp.</i> - - - - - | XVII. 1 |
| 41. | In the case of double provisions by a father for a child, slight circumstances of difference not regarded. - - - - -   | XVII. 1 |
| 42. | Implied satisfaction of a debt from a father to his child by a marriage portion of a greater amount. <i>Chave v. Farrant.</i> - - - - -  | XVIII.  |
| 43. | The presumption of intention to satisfy a legacy by a portion to a child from a parent, or a person placing  |         |

- himself *in loco parentis*, not raised upon a legacy, not described as a portion; the legatee, reported to be the testator's natural daughter, described, not so, but as the daughter of another man. *Ex parte Pye and Dubost.* XVIII. 140
44. The law does not acknowledge the relation of a natural child; who is therefore considered as a stranger within the rule of satisfaction of a legacy *primâ fucie* by an advance of money. (See Nos. 47. 50.) - - - XVIII. 147
45. Portion by settlement, vested at twenty-one, or marriage of daughters, to be paid at the death of the surviving parent; if the parents, or either, should in their or either of their life-time settle, give, or advance, money, lands, &c. in marriage or otherwise, such advancement to be taken as part or the whole of the portion, unless the contrary declared in writing. A legacy, payable at twenty-one, a satisfaction *pro tanto.* *Onslow v. Mitchell.* XVIII. 490
46. Rule as to satisfaction of a portion by a legacy, that there must be some express evidence, or at least a strong presumption, that it was intended as such. Slight variation in the time of payment between twenty-one and twenty-one or marriage, immaterial. - - - XVIII. 493
47. Presumption of satisfaction of a legacy by a portion from a parent or person *in loco parentis*, not applied to an illegitimate child: no relationship existing in law: nor recognized expressly or by inference by the testator, neither a legal parent, nor assuming the parental character, or discharging parental duties; and nothing in the nature or manner of the legacy, indicating, that it was given as a portion by a father for his child. *Wetherby v. Dixon.* (See Nos. 44. 50.) - - - XIX. 407
48. No general rule, that a second gift must be understood as substitution, not addition: but a reasonable presumption, that a debtor does not mean to pay twice. - XIX. 411
49. Origin of the presumption against double portions from giving the name of debt to a portion from a father to child, not perhaps with great propriety in a country, where there is no claim to any thing in the nature of *legitime.* To come within that rule the donor must be parent, or in *in loco parentis*; and the first gift must be in nature of a portion. - - - XIX. 411
50. Distinction between legitimate and illegitimate child, as to the presumption against double portions, favourable to the latter. (See Nos. 44. 47.) - - - XIX. 412
51. Subsequent provision for a legatee not of itself an ademption. - - - XIX. 412

See *Baron and Feme* 45. *Bill of Exchange* 14. *Creditor and Debtor* 9. *Election.* *Evidence* 12. *Portion* 1. 2. *Power (Appointment* 14. 54.) *Purchase* 13. *Will* 161. 189 to 193.

## SATISFIED TERM.

. See *Mortgage* 21.

SCANDAL.

- 1. Answer referred by another defendant.
- 2. Reference on application of any one not a party : even without motion.
- 3. Not what is relevant.
- 4. Principle of reference in the first instance.
- 5. Distinction between plaintiff or defendant referring not applicable.
- 6. Affidavit in bankruptcy taken off the file.
- 7. Allegations material not impertinent : relevant and pertinent, though false and of whatever nature, not scandalous.
- 8. Expunged, whether in suit or bankruptcy, and without application.
- 9. } Any proceeding referred, before the Master, in bank-
- 10. } ruptcy, lunacy ; and of course.
- 11. }

1. Answer referred for scandal on the motion of another defendant. <i>Coffin v. Coffin.</i>	VI. 514
2. Reference for scandal upon the application of any one, not a party, or even without a motion.	VI. 514
3. What is material or relevant not to be considered scandal.	VI. 514
4. Principle of referring scandal to the Master in the first instance.	VI 515
5. Difference between plaintiff and defendant, referring for impertinence, not applicable to scandal.	VI. 515
6. Affidavit in bankruptcy ordered to be taken off the file, as irrelevant and scandalous; with costs as between attorney and client. <i>Ex parte Simpson.</i>	XV. 476
7. Allegations, material to the issue, are not impertinent; and, being relevant and pertinent, though they may be false, and, of whatever nature, are not scandalous.	XV. 477
8. Scandalous matter, as allegations reflecting upon moral character and not relevant to the subject, to be expunged from the record, whether in a suit, or bankruptcy ; and without an application.	XV. 477
9. Any proceeding may be referred for scandal and impertinence; as a state of facts before the Master and affidavits in bankruptcy. <i>Erskine v. Garthshore.</i>	XVIII. 114
10. Jurisdiction to expunge scandal from an affidavit in lunacy or bankruptcy, on reference to the Master. <i>Ex parte Le Heup.</i>	XVIII. 221
11. Motion of course to refer a Bill or an Answer for impertinence or scandal.	XVIII. 223

See Answer 15. Counsel 1. Pauper 7. Practice 138. 286. 368.

SCHEDULED CREDITORS.  
See Party 21.

SCHOOL, PUBLIC.  
See Charity 59. 72.

**SCOTCH AFFIDAVIT.**

*See Evidence 57.*

**SCOTLAND.**

*See Bankrupt 26. 27. Charity 67. 82. Legacy 53. Marriage 4. Ne exeat Regno 25. Perpetuity 5. Practice, 363.*

**SEAL, GREAT.**

*See Patent 9.*

**SEALING AND SIGNING.**

*See Deed 8. Devise (Execution 3.)*

**SECOND COMMISSION.**

*See Bankrupt (Certificate 25.)*

**SECURITIES DEPOSITED.**

*See Bankrupt (Proof 28.)*

**SECURITY FOR COSTS.**

*See Lien 11. 12. Practice 140. 324. Will 272.*

**SEISIN.**

*See Pleading 54.*

**SEPARATE AND JOINT COMMISSION.**

*See Bankrupt 15. (Certificate 21.) (Partner 13. 19.)*

**SEPARATE AND JOINT CREDITORS.**

*See Assets 41. Bankrupt 5. 6. 28. 55. (Assignee 30. 34.) (Election 9.) (Proof 20.) Creditor. Partner 25. Set-off 1.*

**SEPARATE ESTATE.**

*See Baron and Feme.*

**SEPARATE EXECUTION.**

*See Execution 3.*

**SEPARATE MAINTENANCE.**

*See Baron and Feme (Alimony 2.)*

**SEPARATE PROPERTY.**

*See Baron and Feme.*

**SEPARATE REPORT.**

*See Practice 10.*

**SEPARATION.**

*See Baron and Feme (Separate Maintenance 1. 2. 3.)*

**SEQUESTRATION.**

1. On mesne process: whether a sale farther than to pay the expenses.
2. On mesne process application of profits: sale refused.
3. Discharged by appointment of a Receiver.
4. Perishable commodities, &c. sold.
5. Mortgagee examined *pro interesse suo*.
6. Contempt to disturb possession under it. Right of judgment creditor.



1. *Quære*, whether there can be any sale of goods, taken under a Sequestration upon mesne process, farther than to pay the expenses. *Hales v. Shafioe.* - - - I. 86
2. Bill for an account taken *pro confesso* against surviving executor and devisee in trust; and leasehold estates taken under a Sequestration for want of an Answer: the Court would not order the sequestrators to sell; but directed them to apply the profits. The Court also ordered the dividends of money in the Bank on the testator's account to be paid under the Will; but could not order the Bank to transfer before the Act 36 Geo. 3. c. 90. *Shaw v. Wright.* - - - III. 22
3. Appointment of a Receiver in the place of the sequestrators discharges the Sequestration. *Shaw v. Wright.* III. 22
4. The Court will sell perishable commodities, rents paid in kind, or the natural produce of a farm, under a Sequestration. - - - III. 23
5. Upon a Sequestration a mortgagee must come to be examined *pro interesse suo.* - - - VI. 288
6. Contempt to disturb sequestrators in possession. If the Sequestration is executed, a judgment creditor, though prior, can only claim to be examined *pro interesse suo*; if not executed, he may take execution. - - - IX. 336

See *Payment into Court* 1. *Pleading (Demurrer 17.) Practice* 122. 207. 254.

#### SERJEANT AT ARMS.

See *Practice* 316.

#### SERJEANT AT LAW.

See Vol. IV. page 851.

#### SERVANT.

See *Evidence (Pedigree 7.) Fraud* 7. 30. *Legacy* 42. *Maintenance* 2.

#### SERVICE.

See *Baron and Feme. Injunction* 39. *Practice* 122. 124. 125. 317. 380. 384. *Ward of Court* 9.

#### SET-OFF.

1. At law not between joint and separate debts.
2. Demurrer: as matter of set-off; and capable of proof at law.
3. Equitable on fraud; though not at law.
4. No relief in nature of it against separate creditor of bankrupt, indebted to the partnership to a greater amount.
5. At law not between joint and separate debts.
6. Under express promise of creditor to pay a loan by debtor.
7. Not of debt to wife, when sole, against debt from husband to the bankrupt.
8. Not of right of action on policy of insurance against a debt from the bankrupt.
9. In Equity long before the Statute.
10. Equitable on mutual credit; though no mutual debts.

## SET-OFF.—SETTLEMENT.

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- |   |           |
|---|-----------|
| 1. At law there can be no set-off between joint and separate debts. (See No. 5.) - - - - -  | III. 248  |
| 2. Bill by insurance broker for a discovery and account of money paid and received by him in that capacity on account of the defendants, and money due to him for commission, &c. and for promissory notes indorsed to him; and to restrain an action, as brought contrary to the universal custom of the business. Demurrer allowed: the subject being matter of set-off, and capable of proof at law. <i>Dinwiddie v. Bailey.</i> - - - - -   | VI. 136   |
| 3. Equitable set-off under circumstances; when there could be none at law; viz. bankers, directed to lay out money in Navy Annuities, not doing so; but representing, that they had; making entries, and accounting for the dividends, accordingly; and taking a joint promissory note from the party, under that supposition, and her brother, to secure a debt from him to them; upon which the assignees under their bankruptcy sued him alone. Order for proof of the balance, setting off the debt upon the note; an injunction, and delivery of the note. This case rests upon the fraud. <i>Ex parte Stephens.</i> XI. 24. | XIX. 467  |
| 4. Separate Commission of Bankruptcy. Relief in the nature of set-off against a separate creditor of the bankrupt, indebted to the partnership to a greater amount, refused. <i>Ex parte Twogood.</i> - - - - -   | XI. 517   |
| 5. Joint and separate debts cannot be set-off against each other at law. (See No. 1.) - - - - -   | XI. 519   |
| 6. Set-off, where a creditor had borrowed from the debtor under an express promise to pay. <i>Taylor v. Okey.</i> -   | XIII. 180 |
| 7. A debt from a bankrupt to a married woman, <i>dum sola</i> , cannot be set off against a debt from her husband to the bankrupt. <i>Ex parte Blagden.</i> - - - - -   | XIX. 465  |
| 8. The benefit of a policy of insurance, previous to the bankruptcy of the insured, upon a loss after it, passes; and gives a right of action to the assignees, not capable of set-off against a debt from the bankrupt. <i>Ex parte Blagden.</i> - - - - -   | XIX. 465  |
| 9. Distinction between set-off in Equity and at Law. In Equity it prevailed long before the Statute. - - -  | XIX. 467  |
| 10. Equitable set-off upon mutual credit; though no mutual debts, upon which a set-off could be maintained at law. <i>James v. Kynnier.</i> - - - - -   | V. 108    |

See Bankrupt. *Baron and Feme* 69. *Lien* 21.

## SETTLEMENT.

1. By *fême sole*, immediately before marriage, without notice to the husband established.
2. } Not corrected, unless on something in the recital, &c.
3. }
4. Creditor impeaching must state fraud; and get judgment.

5. Reformed by the recital.
  6. After marriage, in pursuance of agreement before, supported against fraud.
  7. Creating charge, though for a volunteer, not revoked by a general revocation merely for partition, &c.
  8. Reformed by a letter from the mother on marriage of her daughter.
  9. Reformed against husband's devisee, but not creditors, by his instructions.
  10. To children according to appointment and in default thereof over, construed in default of appointment, not children.
  11. Of personal estate implied conformable to limitations of real.
1. A woman pending a treaty of marriage with *A.* settled all her property to her separate use with his approbation: a few days after *B.* by a stratagem induced her to marry him the day after she first thought of it: *B.* had no notice of the settlement: the settlement was established; and a deed of revocation, obtained by duress, set aside. *Countess of Strathmore v. Bowes.* - - - I.
  2. Marriage settlement not altered in favour of the intention; the recital being too general, and nothing *dehors* the words to do it by. *Doran v. Ross.* (See Nos. 3. 5. 8. 9.) I.
  3. If any thing in the recital, by which to correct, it may be done. (See Nos. 2. 5.) - - - I.
  4. Creditor to impeach a settlement for fraud must state, that he is defrauded by it, and get judgment for his debt. - - - I. 1
  5. Settlement reformed according to intention declared in recital. (See Nos. 2. 3.) - - - I, 1
  6. Settlement after marriage of the wife's property, reciting, and in pursuance of, a parol agreement before, in trust as to part of the produce to the separate use of the wife; as to the rest, for husband for life, then for wife for life, then among the children according to appointment of the survivor, good against creditors of the husband. Their bill to set it aside was dismissed with costs; and defendants were held entitled to that judgment even against a plaintiff, who was made so without authority: but his whole expense, and also the whole expense above the costs taxed of all the defendants, except the husband, were decreed to be paid by the Solicitor for plaintiffs; the transaction being considered as a combination between the husband, the creditors, who authorized the bill, and the Solicitor, to defraud the children. *Dundas v. Dutens.* - - - I. 1
  7. Charge well created by settlement, though for a volunteer, not revoked by general revocation of the uses under a power for the mere purpose of partition of joint estate, and re-settling to the same uses the separate part to be taken on partition. *Earl of Uxbridge v. Bayly.* - I, 5

## SETTLEMENT.—SEWERS.

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8. Settlement reformed in favour of the younger children against the heir of the mother, claiming the reversion, by a letter from her on the marriage of her daughter, stating the intention. *Barstow v. Kilvington*. (See No. 2.) - - - - - V. 593
9. Settlement after marriage reformed in favour of the issue against the devisee of the husband, claiming under the reversion, by his letter of instructions for drawing the settlement: but this equity did not prevail against creditors. (See No. 2.) *Jenkins v. Quinchant*. - - - V. 596, n.
10. Settlement to such uses as the husband and wife shall jointly appoint, and in default of such appointment, to them for life; and after the decease of the survivor to the use of all or any of the child or children of them in such shares and proportions, and for such estate and estates, term or terms, and payable at such time or times, and in such manner and form, as the husband should by deed or will appoint; and in default thereof to him and his heirs. The event, upon which the last limitation depends, is default of appointment, not of children. *Jenkins v. Quinchant*. - - - V. 596, n.
11. Devise in strict settlement, with power to the tenants for life to jointure, on condition that two-thirds of the portion should upon such marriage be settled; one-third upon the eldest son of the marriage, and one other third upon the younger children. Upon the intention, that the settlement should be conformable to the limitations of the real estate, a trust for the father for life was established: and the interest of the eldest son was not to be divested except by his death under twenty-one without issue male. *Burrell v. Crutchley*. - - - XV. 544

See Articles 1. *Baron and Feme* 47. 95. *Construction* 5. (*Contingent Interest* 1.) *Contract* 1. 3. 20. *Fraudulent Settlement*. *Infant* 1. 11. *Lease (Renewal* 6.) *Satisfaction* 22. *Ward of Court* 1.

## SETTLEMENT, POST-NUPTIAL.

See *Creditor* 3.

## SEVERAL BOND.

See *Bond* 9. 10.

## SEWERS.

1. Generally the remedy against the act of the Commissioners by *Certiorari*, not Injunction.
1. Injunction against the act of the Commissioners of Sewers, reducing the height of water in a river, dissolved: there being a much shorter remedy by *Certiorari* in the Court of *King's Bench*; who interfere with great caution. Whether there may be cases, in which a Court of Equity would interfere, *quære*. *Kerrison v. Sparrow*. - XIX. 449

SHELLEY'S CASE, RULE IN.  
See *Heir* 7. 8.

SHERIFF.  
See *Jurisdiction* 20.

SHIP.

- 1. Lien of master for necessary repairs abroad without hypothecation.
- 2. Cannot be pledged for repairs here without special contract.
- 3. Lien by the *Civil Law*.
- 4. And cargo subject to master's hypothecation.
- 5. Express hypothecation for repairs here: not abroad, in *Ireland, &c.*
- 6. Lien of master for repairs, &c. abroad, without hypothecation, against third persons.
- 7. Lien for goods thrown overboard not extended to Injunction against delivering the cargo, &c. Adjustment not confined to arbitration.

- 1. Lien of the master of a ship by bills drawn, and payments made, for necessary repairs, abroad, in the prosecution of the voyage; though no instrument of hypothecation. (See Nos. 5. 6.) *Hussey v. Christie.* - - - XIII. 5
- 2. For repairs of a ship in this country the owners are personally liable; and the ship cannot be pledged without a special contract. - - - XIII. 5
- 3. By the *Civil Law* there is also a lien upon the ship; following her into the hands of purchasers, in different countries, for different periods. - - - XIII. 5
- 4. Power of the master to hypothecate the cargo, as well as the ship, for a reasonable purpose, only for the benefit of the ship and cargo. - - - XIII. 5
- 5. Distinction of the law of *England*, requiring an express hypothecation for repairs of a ship in *England*, does not take place as to repairs abroad; and *Ireland, Jersey, and Guernsey*, are foreign countries for this purpose. (See Nos. 1. 6.) - - - XIII. 5
- 6. The master may have a lien (for repairs, &c. abroad,) without an instrument of hypothecation, against a third person. (See Nos. 1. 5.) - - - XIII. 6
- 7. Lien for general contribution to individual loss by property thrown overboard for the safety of the ship, under the right of the master to require security, not extended to an Injunction against delivering the cargo, receiving the freight, and parting with any share of the ship. The mode of adjustment not confined by usage to arbitration. *Hallett v. Bousfield.* - - - XVIII. 1

See *Bankrupt (Reputed Owner 1.) East India Ship.*  
*Freight 1. Lien 28. 29*

SHIP-OWNER.  
See *Bankrupt.*

**SHIP REGISTRY.**

*See Partner 14. Registry. Vendor and Vendee 18.*

**SHORT BILLS.**

1. The property of remitter, subject to account.
1. Short bills, remitted to a banker, the property of the remitter, subject to acceptances, &c. on his account. - **XIX. 349**  
*See Banker 2. Bankrupt (Lien 2. 3. 4. 5. 6.) (Reputed Owner 8.) Bill of Exchange.*

**SIGNING AND SEALING.**

*See Deed 8. Devise (Execution 3. 5.)*

**SIMPLE CONTRACT DEBT.**

*See Interest 1. Will 32. 34.*

**SIX CLERKS.**

1. Formerly the only attornies of the Court. Establishment of the Sixty Clerks under them.
1. The Six Clerks formerly the only attornies of the Court. Establishment of the Sixty Clerks under them. - **XIX. 197**

**SIX CLERKS' CERTIFICATE.**

*See Practice 94, 246.*

**SMUGGLING.**

*See Contract (Illegal 2. 7. 9.)*

**SOLICITOR.**

*See Attorney and Solicitor. Bankrupt (Act of Bankruptcy 5.) (Costs 1.) Contract 83. Interpleader 6. Mortgage 33. Principal and Agent 9. Receiver 6. Settlement 6.*

**SOUTHWARK.**

*See Jurisdiction 20.*

**SPECIAL OCCUPANT.**

*See Assets 49. Infant 33. Occupant. Will 69.*

**SPECIFIC CHATTEL.**

*See Chattel. Will 11. 178. 196. 197.*

**SPECIFIC DEVISE AND LEGACY.**

1. }  
2. } Of stock, ring, &c.  
3. }
4. Not of personal estate, merely as combined with a devise.
5. Not without something marking the specific thing.
6. Request of furniture, "plate excepted."
7. Not liable to contribute to pecuniary legacies.
1. Bequest of stock: if the testator has it at the time, it is specific; and any act, destroying it, proves an intention

	to revoke. If a ring or a picture bequeathed cannot be found, that cannot be rectified. - - - - -	Vol. Page III. 310
2.	Specific legacy of stock decreed according to the value at the time it ought to have been transferred. <i>Morley v. Bird.</i> - - - - -	III. 628
3.	Dividends on specific legacy of stock, from the death of the testator. <i>Barrington v. Tristram.</i> - - - - -	VI. 345
4.	Bequest of personal estate not held specific merely from being combined with a devise of land. <i>Howe v. Earl of Dartmouth.</i> - - - - -	VII. 137
5.	Legacies not specific without something marking the specific thing; as the description "my stock," &c. A mere direction to transfer, and that so much capital be kept in the same public fund, is not sufficient. <i>Sibley v. Perry.</i>	VII. 522
6.	Construction of a bequest of furniture, plate excepted, as a specific disposition without notice of plate. -	XIX. 644
7.	Specific legacy not liable to contribute to pecuniary legacies. - - - - -	XIX. 645

See *Assets* 15. 21. *Devise* 1. 12. *Executor* 75. 94. *Legacy* 32. 36. 37. 38. 40. 41. 47. 56. *Residue* 15. *Trust* 14. 59. *Will* 11. 178. 196. 197. 303.

### SPECIFIC PERFORMANCE.

See *Auction* 4. 10. *Chattel* 1. 2. *Contract.* *Landlord and Tenant* 40. 53. *Party* 2. *Pleading (Answer* 11.) *Practice* 32. *Purchase* 46. *Stock* 9.

### SPIRITUAL COURT.

See *Baron and Feme (Separation* 7.) *Ecclesiastical Court.* *Jurisdiction* 15. 25. *Marriage* 2. *Practice* 146. *Will* 277.

### SPRINGING USE.

See *Use* 3.

### STALE DEMAND.

See *Laches* 8.

### STAMP.

See *Bankrupt (Petition* 3.) *Contract* 76. *Jurisdiction* 17.

### STATE, FOREIGN AND INDEPENDENT.

See *Enemy* 1. *Foreign State.* *Jurisdiction* 2. *Pleading* 2.

### STATUTE.

1.	Not confined, but, if doubtful, explained, by the preamble.	
2.	Remedial construed liberally.	
3.	General words construed generally. Exception.	
4.	Clear and express enactment not controlled by the preamble.	
1.	If the enacting part of a Statute will bear only one interpretation, the preamble shall not confine it: if doubtful, the preamble may be applied to throw light upon it. (See No. 4.) - - - - -	XIII. 36



## STATUTE.—STOCK.

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| 2. Liberal construction of a remedial statute. - - -  | XIII. | 253  |
| 3. General words in a statute must receive a general construction; unless there is in the statute itself some ground for restraining their meaning by reasonable construction, not by arbitrary addition or retrenchment. - | XVII. | 91   |
| 4. The preamble of an Act of Parliament, though it may assist ambiguous words, cannot control a clear and express enactment. (See No. 1.) <i>Lees v. Summersgill</i> .  | XVII. | 508  |
| See <i>Infant</i> 28. <i>King's Printer. Practice</i> 36. 233, <i>Presumption</i> 15.   |       |      |

## STATUTE OF DISTRIBUTIONS.

See *Advancement* 1. *Executor* 73. *Representative* 19. *Will* 207. 251. 252. 253.

## STATUTE OF FRAUDS.

See *Auction* 7. 8. *Charity* 42. *Contract* 3. 11. 74. 79. 80. 89. 90. *Devise* (*Execution* 2. 3.) (*Witness* 3.) *Evidence* (*Party* 11.) (*Witness* 14.) *Frauds* 34. (*Stat. of.*) *Pleading* 11. (*Answer* 11.) *Principal and Surety* 16. 23. *Will* 186. (*Execution* 1. 3. 4.) (*Republication.*)

## STATUTE OF FRAUDULENT DEVISES.

See *Charge* 12.

## STATUTE OF LIMITATIONS.

See *Limitation* (*Time.*) *Pleading* 23. 32.

## STATUTE OF LUNATICS.

See *Lunacy* 5.

## STATUTE OF USES.

See *Will* (*Executory Devise* 2.)

## STATUTE OF WILLS.

See *Will* 8.

## STATUTES ENABLING AND RESTRAINING.

See *Lease* 1.

## STEWARD.

See *Account* 4. *Fraud* 5. *Injunction.* *Party* 2. *Principal and Agent* 22. 23. 26. *Trust* 76.

## STIRPES.

See *Distribution.*

## STOCK.

1. } Right under agreement for a transfer, in case of fall
2. } or rise.
3. Not the correct title of the 3 per cents.: a perpetual annuity.
4. Bonus on Bank Stock held capital. (See the note, Vol. IV. page 802.)
5. Bequeathed without two witnesses, subject to the Will.
6. Death of trustees under a foreign Will, and no representation here, not within Stat. 36 Geo. 3. c. 90.

7. Costs to the Bank, resisting a transfer under an agreement to relinquish a life interest in specific bequest.
  8. Interest in it a perpetual annuity, subject to redemption.
  9. No specific performance of agreement to transfer.
  10. } Bonus on Bank Stock held capital (See note, Vol. IV.
  11. } page 802.)
  12. As to the jurisdiction over it for creditors.
  13. Order under Stat. 36 Geo. 3. c. 90, on admitted disobedience of an order to transfer.
  14. Injunction by the Bank against executor's action failed; as unnecessary, if the action could not be maintained: otherwise for want of equity.
  15. Not liable to debts during life except on bankruptcy.
  16. Taken as at the time of appropriation.
  17. Passes by indefinite bequest of the dividends.
1. Transfer of stock by way of loan upon bond, with condition to replace the stock six months after the date, and in the mean time to pay interest at 5 per cent. The stock not being replaced, and being depreciated, the obligee is entitled to the value of the stock at the time of the transfer with interest at 5 per cent, to the date of the Report; credit being given for some payments on account of the principal. *Forrest v. Elwes.* - - - IV. 4
  2. In an action recently after breach of an agreement to transfer stock the rise, if any, would be given in damages. IV. 4
  3. The 3 per cents. are perpetual annuities granted for ever, redeemable by the public. The common expression therefore of "£100 Stock," &c. is incorrect. (See No. 8.) IV. 7
  4. The 5 per cent. annuities of 1797, created upon the subscription of the Bank for the public service, and in pursuance of a resolution of the Bank divided among the proprietors of the Bank Stock *pro rata*, considered as an accretion to the capital; and therefore a person entitled for life had the benefit of it by way of dividend only. *Brander v. Brander (a).* (See Nos. 10. 11.) - IV. 8
  5. Stock, bequeathed by a Will without two witnesses, is subject in the hands of the executor to the directions of the Will; even for the purpose of a residuary bequest. VII. 4
  6. Trustees under a foreign Will dead; and no personal representation taken out in this country: not a case for relief by directing a transfer of stock within the Statute 36 Geo. 3. c. 90. *Lee v. The Bank of England.* - VIII.
  7. Specific bequest of stock to the executrix for life, and after her death to her daughter absolutely at twenty-one. The Bank, resisting a transfer, according to an agreement to relinquish the life interest, without the direction of the Court, are entitled to costs. *Austin v. The Bank of England.* - - - - - VIII. 5
  8. The interest in stock nothing but a right to receive a perpetual annuity, subject to redemption. (See No. 3.) IX. 1

(a) See the note, Vol. IV. page 802.

## STOCK.—STOCK-JOBGING ACT.

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9. No specific performance of an agreement for a transfer of stock. - - - - -	X.	161
10. An extraordinary division of a sum of money by the Bank of <i>England</i> among the proprietors of Bank Stock, beyond the usual dividend, considered as capital; and therefore not the absolute property of the tenant for life: the <i>Lord Chancellor</i> following, but disapproving, the former decisions; and holding the circumstances, that the division was in money, not stock, and that it was to be presumed to be profit arising in the time of the tenant for life, too slight to form a distinction (a). <i>Paris v. Paris</i> . (See Nos. 4. 11.) - - - - -	X.	185
11. An extraordinary division of profit by the Bank of <i>England</i> , among the proprietors of Bank Stock considered as capital (a). <i>Clayton v. Gresham</i> . (See Nos. 4. 10.)	X.	288
12. As to the jurisdiction over stock in favour of creditors, <i>quære</i> . <i>Rider v. Kidder</i> . - - - - -	X.	360
13. Order for a transfer of stock, within the Stat. 36 Geo. 3. c. 90, as upon a refusal by a party, appearing by Counsel, and admitting, that she had disobeyed an Order to transfer. <i>Rider v. Kidder</i> . - - - - -	XIII.	123
14. Demurrer allowed to a Bill by the Bank of <i>England</i> for an Injunction against the action of an executor, claiming a transfer of stock. Considering the stock as specifically bequeathed (which was doubtful) to trustees in <i>France</i> upon special trusts, if the executor cannot maintain the action, upon the nature of the bequest, or as having assented, the Injunction is unnecessary: if he can, upon his title to the stock, to be applied as the other property, there is no equity. <i>Bank of England v. Lunn</i> .	XV.	569
15. Stock not liable to the payment of debts during the life of the proprietor in any way except under a Commission of Bankruptcy. - - - - -	XV.	577
16. Direction for sale or transfer of stock without attention to the rise or fall: the party must take it, as it happens at the time of appropriation. <i>Ex parte Pye and Dubost</i> .	XVIII.	140
17. Indefinite bequest of the dividends gives the absolute property of stock. <i>Page v. Leapingwell</i> . - - -	XVIII.	463
See Assets 33. 34. Bank of England 3. 4. Bank Stock 1. 2. Bankrupt (Proof 25. 30.) Charity 1. Chose in Action 1. Contract (Illegal 3. 7.) (Specific Performance 28.) Fraud 30. Heir 15. Injunction 21. Specific Devise, &c. 2. Trust 50. Usury 6. Will 298.		

## STOCK-JOBGING ACT.

1. Discovery confined to those clauses of the Act, giving it expressly, with protection from penalties.
1. Discovery, in support of an action to recover money under the Stock-Jobbing Act, Statute 7 Geo. 2. c. 8,

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(a) See the note, Vol. IV. page 802.

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confined to those clauses, as to which it is expressly given, with protection from the penalties; and therefore not extended to the 5th and 8th sections. *Bullock v. Richardson.* - - - - -

XI. 373

*See Consideration (Illegal 1.) Contract 92.*

**STOCK, FARM.**

*See Landlord and Tenant 17.*

**STONE-QUARRY.**

*See Trespass 3.*

**STOPPAGE IN TRANSITU.**

*See Contract 112. Lien 15. 17.*

**SUBJECT.**

*See Ne exeat Regno 22. Power 3.*

**SUBPŒNA.**

*See Injunction 39. Practice 29. 98. 99. 129. 363. 365.*

**SUBSTITUTION.**

*See Power 8. Purchase 11. Satisfaction. Will 280.*

**SUCCESSION.**

*See Domicil.*

**SUGAR-HOUSE.**

*See Nuisance 2.*

**SUNDAY, SERVICE ON.**

*See Practice 380.*

**SUPERSEDEAS.**

*See Bankrupt (Superseding 56.)*

**SUPERSTITIOUS USE.**

1. To such purpose as the Superior of a Convent may judge expedient.
2. Limits of Stat. 1 Edward 6. c. 14.
1. Legacy to such purposes as the Superior of a Convent or her successor may judge most expedient void as a superstitious use. - - - - -
2. The Statute 1 Edward 6. c. 14, relates only to superstitious uses of a particular description then existing. -

VI. 567

VII. 495

*See Charity 85.*

**SUPPLEMENT.**

*See Bankrupt (Abatement 4.) Revivor 2.*

**SUPPLEMENTAL ANSWER.**

*See Answer 20. 22. Practice 242. 245.*

**SUPPLEMENTAL BILL.**

*See Pleading 28. 29. (Demurrer 25.) Practice 42.*

## SUPPLEMENTAL BILL, &c.—TACKING.

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### SUPPLEMENTAL BILL IN NATURE OF A BILL OF REVIEW.

See *Bill of Review* 1. 3. 5.

### SUPPLY OF SURRENDER.

See *Copyhold* 2.

### SURCHARGE AND FALSIFY.

See *Account* (*Settled* 3. 4. 5. 6. 7.) *Mortgage* 19.

### SURETY.

See *Annuity* (*Jurisdiction* 7.) *Bankrupt* (*Proof* 6. 28.)  
(*Surplus* 5.) *Baron and Feme* 72. *Lost Bond* 1.  
*Party* 23. *Principal and Surety*.

### SURPLUS.

See *Bankrupt. Residue. Satisfaction* 23. *Trust* 59.

### SURPLUSAGE.

See *Pleading* 48.

### SURPRISE.

See *Contract* 100. 101. (*Specific Performance* 9.)

### SURRENDER.

See *Bankrupt* (*Superseding* 29.) *Copyhold* 8. 9. *Parent  
and Child* 1. *Power* 35. *Will* 85. 96.

### SURREY.

See *Jurisdiction* 20.

### SURVIVOR.

1. Not leaving issue limited to the death of tenant for life.
2. "Survivors" construed "others."

Construction of a Will, confining a clause of survivorship,  
not leaving issue, to the death of the tenant for life.

*Jenour v. Jenour.* - - - - -

X. 562

The word "survivors" construed "others." - - -

XVII. 482

See *Baron and Feme* 30. 40. 56. 57. 58. 60. *Executor* 54.

*Joint-tenant* 4. *Partner* 10. *Vesting* 33. 42. 59. 60.

*Will* 55. 113. 158. 204. 213.

### SWITZERLAND.

See *Foreign State* 1. 3.

### SYNAGOGUE.

See *Charity* 85.

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## TACKING.

1. Personal securities to mortgage.
2. Not separate to joint mortgage.
3. Bond against heir; not mortgagor or creditors.
4. Two mortgages.
5. Not against creditors or assignees for value.

6. Not by third mortgagee, taking in the first, subject to an outstanding term, against the second: whether against mortgagor's assignees; the Commission, if not the Act of Bankruptcy, subsequent to the last mortgage.
  7. Not by judgment creditor: but mortgagee may tack a subsequent judgment.
  8. Not affected by relation to the act of bankruptcy.
  9. } Not after decree to settle priorities. Distinction of a
  10. } Commission of Bankruptcy.
  11. Not by mortgagee, with the legal estate, a mortgage after bankruptcy, without notice and before the Commission.
- 
1. Personal securities pledged for a specific debt: after a mortgage to the creditor the same securities with others were pledged to him for the balance of an account: the transactions being distinct, redemption of the personal securities was decreed without discharging what was due on the mortgage. *Jones v. Smith (a)*. - - - II. §
  2. *A.* engaged with *B.* in one mortgage may redeem; though *B.* has pledged another estate to the same person. - II. §
  3. Bond cannot be tacked to a mortgage against the mortgagor or creditors; but may against the heir, merely to prevent circuity of action. (See No. 5.) - - - II. §
  4. Two mortgages to the same person absolute at law: mortgagee may insist, that both or neither shall be redeemed by the mortgagor or his assignee. - - - II. §
  5. No tacking against creditors or assignees for valuable consideration. *Adams v. Claxton*. (See No. 3.) - VI. 2
  6. The claim to tack by a third mortgagee, having taken in the first mortgage of the inheritance, but subject to a term outstanding, given up as against a mesne incumbrancer: as against the assignees under the bankruptcy of the mortgagor, *quære*: the Commission being subsequent to the last mortgage; whether the act of bankruptcy was previous, doubtful. No objection, that the consideration for the last mortgage, was a debt originally by simple contract. *Ex parte Knott*. - - - XI. 6
  7. Mortgagee may tack a subsequent judgment; but a mere judgment creditor cannot tack; not contracting for an interest in the land; though he has a lien. - - - XI. 6
  8. The right to tack in equity not affected by the relation to the act of bankruptcy. - - - XI. 6
  9. Tacking allowed up to a Decree to settle priorities; not afterwards. - - - XI. 6
  10. Distinction as to tacking between a Commission of Bankruptcy and a Decree to settle priorities. - - - XI. 6
  11. Mortgagee not permitted to tack as against assignees in bankruptcy a mortgage subsequent to an act of bank-

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(a) Reversed in the *House of Lords*. See the note, Vol. II. page 380.

## TACKING.—TENANT FOR LIFE.

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ruptcy, though without notice, and previous to the Commission; and though he had the legal estate. *Ex parte Herbert.* - - - - -

XIII. 183

See *Mortgage. Priority* 2.

## TAIL.

See *Election* 22. *Estate Tail.*

## TAXATION.

See *Attorney and Solicitor (Attorney and Client* 5. 6.)  
*Bankrupt (Attorney, &c. 4.) Practice* 268. 355.

## TEMPORARY ADMINISTRATION.

See *Administration (Letters of)* 1. 2.

## TENANT.

1. Duty to keep boundaries; and the consequence.
2. Injunction against landlord's Ejectment on terms: the answer stating insolvency; various breaches during possession under a farm lease, &c.
1. Duty of the tenant to keep the boundaries; and the Court will aid the reversioner to distinguish them; and, if they cannot be distinguished will give him as much land. -
2. Bill for a specific performance of a parol agreement to grant a farm lease with the usual and customary covenants of the neighbourhood, and an Injunction to prevent an Ejectment; the plaintiff having taken possession. Upon the answer, stating the insolvency of the plaintiff and various breaches of the agreement during five years possession, to the ruin of the estate, the Injunction was continued on an undertaking to give judgment in Ejectment, go to Commission, and set down the cause for next Term, paying the rent into Court. Defendant also insisting on a covenant not to assign, that is the subject of inquiry as to the custom of the neighbourhood. *Boardman v. Mostyn.* - - - - -

VI. 293

VI. 467

See *Copyhold (Mine* 2.) (*Timber* 2. 3. 4. 5.) *Forfeiture* 6.  
7. 8. 9. *Injunction* 7. *Interpleader* 6. 9. *Landlord and Tenant. Lessor. Notice* 6. 12. *Variance* 1. *Waste.*

## TENANT-RIGHT.

See *Lease (Renewal* 10.)

## TENANT AT WILL.

See *Landlord and Tenant* 22. 49. *Trust* 103.

## TENANT BY SUFFERANCE.

See *Trust* 103.

## TENANT FOR LIFE.

1. Disqualified by a forfeiture from joining in Bill for Injunction.
2. Impeachable cannot prevent vendee of timber from cutting.



3. Subject to the interest of incumbrances: not to part of the capital.
4. Arrangement with remainder-man as to a personal interest wearing out; or, though future, capable of sale.
1. Tenant for life, having made a lease of coal-mines, amounting to a forfeiture, cannot join the remainder-man in a bill for an Injunction. *Wentworth v. Turner.* III. 3
2. Tenant for life, liable to waste, having sold timber, cannot prevent the vendee from cutting it. - - - III. 3
3. The old rule, imposing upon the tenant for life a gross sum, part of the capital of incumbrances, is at an end: but he takes subject to all the interest. - - - V. 107
4. Principle of arrangement as to personal estate between the persons entitled for life and in remainder; that the subject, being an interest wearing out, or capable of immediate sale, though future in enjoyment, shall be valued; and the person entitled for life shall have interest upon the amount; from the death of the testator in this instance; a share in a trade, to be ascertained and paid at certain periods after his death. *Fearns v. Young.* - IX. 549

See *Apportionment* 2. 4. *Assets* 32. 33. *Charge* 7. *Copyhold* 17. 18. 19. (*Waste* 3.) *Equitable Recovery* 3. *Estate (Conversion)* 20. *Estate (For Life.)* *Fraud* 29. *Interest* 34. (*Absolute or for Life.*) *Lease (Renewal)* 6. *Lien* 19. *Merger* 5. *Purchase* 9. 16. *Stock* 10. *Timber* 1. *Title Deeds* 1. 4. *Trust* 11. 123. *Waste* 14. 21.

### TENANT FOR YEARS.

See *Estate (For Years.)* *Waste* 14.

### TENANT FROM YEAR TO YEAR.

1. Interest transmissible.
  1. Tenancy from year to year is an interest transmissible to representatives. - - - - - XV. 241
- See *Landlord and Tenant* 50.

### TENANT IN COMMON.

1. On "equally."
2. No action of trover between them.
3. Under devise to children, subject to appointment.
4. Under "equally divided."
5. Of mortgage term joining in purchasing the equity of redemption to them and their heirs.
1. "Equally" makes a tenancy in common. - - - III. 260
2. No action of trover between tenants in common. - - - IV. 760
3. Devise to the devisor's wife for life, and after her decease unto and among all and every their children in such manner and proportion as she should in her life or by Will appoint; empowering her to sell, and receive the interest for life; and appointing after her decease both principal and interest to and among their children, in

such proportions, as aforesaid. All the children, having died in the life of their mother, who died without appointment, were held entitled as tenants in common to several estates of inheritance. *Casterton v. Sutherland.*

IX. 445

Tenancy in common under the words "equally divided."

X. 569

Tenants in common of a mortgage term, joining in a purchase of the equity of redemption to them and their heirs, are tenants in common of the inheritance.

XIX. 444

See *Consignment* 2. *Joint Tenant* 2. 6. 10. *Lien* 19. *Partition* 1. *Vesting* 4. 33. 36. *Waste* 20. 22. 23. 25. *Will* 55. 113. 158. 204.

### TENANT IN TAIL.

1. Appeal by the issue.
2. Writ of error by remainder-man.
3. Considered in Equity as having the whole estate; at least for the purpose of suit: Distinction on contract.
4. When plea of dismissal on merits would bar remainder-man of a new estate-tail under the same gift.
5. Of money to be laid out in land, &c.

Appeal from a decree against a tenant in tail by the issue.

IX. 56

Writ of error by remainder-man in tail.

IX. 56

A Court of Equity in many cases considers the tenant in tail as having the whole estate vested in him, at least for the purposes of suit; for which purposes it does not look beyond the estate-tail in a suit to bind the right to the land in respect of charges created by the author of the gift; as to which the subsequent remainder-man has a clear interest in the suit of the prior tenant in tail. Distinction, where the suit is founded upon contract by the tenant in tail.

IX. 56, 57

A Court of Equity would in many cases, not all, admit a plea of dismissal upon the merits to bar a remainder-man in tail of a new estate-tail under the same gift, as well as a person claiming the same estate; upon a principle resulting from the rule, that the tenant in tail represents the inheritance. Exception upon special circumstances.

IX. 57

Distinction between Fine and Recovery as to decreeing payment of money, to be laid out in land to be settled, to the tenant in tail, till Statute 40 Geo. 3. c. 56.

IX. 63

### 3R POSSIBILITY OF ISSUE EXTINGUISHED.

1. Instances: in possession; or of a remainder, &c.

Instances of tenant in tail after possibility of issue extinct; in possession, or of a remainder or reversion.

XV. 423

See *Contract* 14. *Contribution*. *Decree* 1. *Estate (Tail)*. *Exoneration* 1. *Fine* 3. *Merger* 4. 5. *Party* 4. *Perpetuity* 7. *Pleading* 28. 29. 30. *Purchase* 27. *Will* 123.

**TENANT IN TAIL OF LAND TO BE PURCHASED.**  
*See Practice 233.*

**TENANT PUR AUTER VIE.**  
*See Estate (Pur Auter Vie.)*

**TENDER.**

- 1. Right waved by declaration.
  - 1. Right to tender waved by the party's declaration, that he will not accept it. - - - - - **XIX.**
- See Mortgage 15.*

**TERM.**

- 1. In gross : or to attend the inheritance.
  - 2. When the trust is satisfied, attends the inheritance; whether directed, or not.
  - 3. } When subsequent incumbrancer, getting it in, is pro-
  - 4. } tected. Distinction as to dowress.
  - 5. For years settled.
  - 1. Distinction between a term in gross and a term to attend the inheritance. - - - - - **X.**
  - 2. When the purposes of the trust of a term are satisfied, the term belongs in equity to the owner of the inheritance; whether declared by the original conveyance to attend the inheritance or not. - - - - - **X.**
  - 3. Rule between incumbrancers, that a subsequent incumbrancer, without notice, getting in a term, may protect himself; unless there are circumstances, giving the prior incumbrancer a better right to call for an assignment. - - - - - **X.**
  - 4. Subsequent incumbrancer cannot protect himself by a satisfied term against a prior incumbrance, unless in some sense got in: either by an assignment, or making the trustee a party to the instrument, or taking possession of the deed, creating the term: nor, if he has notice, before he pays his money. Distinction upon that as to the dowress, upon no principle, but established by practice. - - - - - **X.**
  - 5. Settlement of a term for years. - - - - - **XII.**
- See Assets 1. Estate (For Years 1.) Merger 3. Mortgage 1. Purchase 30.*

**TERM IN GROSS.**  
*See Dower 9.*

**TERM OUTSTANDING.**  
*See Practice 156.*

**TERM REPORTS.**  
*See Copyright 3.*

**TERM, REVERSIONARY.**  
*See Portion 3. 6.*

**TERM SATISFIED.—THEATRE.**

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**TERM SATISFIED.**

*See Mortgage 21.*

**TERM TO ATTEND THE INHERITANCE.**

*See Dower 7. 9. Trust 123.*

**TESTAMENT, PRIVILEGED.**

*See Charity 84.*

**TESTAMENTARY DEED OR PAPER.**

*See Will 31. 177. 185.*

**TESTIMONY, PERPETUATING.**

*See Bill to perpetuate. Evidence 65. 66.*

**THEATRE.**

1. Order in the case of *Drury Lane*.
2. Jurisdiction on the *Opera House* declined before reference to arbitration; though generally an agreement to refer is no objection.
3. Manager, &c. of the *Opera House* refused except on the principle of partnership; as necessary to the relief, by winding it up; not to carry it on.
4. Jurisdiction as on a partnership.
5. Contract not to write for any other legal; as the restraint of a performer.

1. Order made in the case of *Drury Lane Theatre* on the authority of the cases of the *Royal Circus* and the *Opera House*. *Ex parte Ford*. - - - - -

**VII. 617**

2. Although an agreement to refer disputes to arbitration, is, generally, no objection to a suit in a Court of Equity, yet upon the nature of the subject, the management of the *Opera House*, and the anxious provision of the parties for arbitration, the Court refused upon motion to interfere, before they had taken that course. *Waters v. Taylor*. - - - - -

**XV. 10**

3. The principle, upon which a Court of Equity interferes between partners by appointing a manager, receiver, &c. is merely with a view to the relief, by winding up and disposing of the concern, and dividing the produce; not to carry it on. The Court therefore would not upon motion appoint a manager, &c. of the *Opera House*, except upon the principle, applicable to any other partnership, as necessary to the relief, a foreclosure; taking into consideration also the difficulties from the nature of the subject; and the contract, an anxious provision for arbitration; and that one party was by the express contract manager. *Waters v. Taylor*. - - - - -

**XV. 10**

4. Jurisdiction in the case of a Theatre considered as a partnership. *Morris v. Colman*. - - - - -

**XVIII. 437**

5. Contract with the proprietors of a Theatre not to write dramatic pieces for any other legal; as a similar restraint of a performer would be; not resembling a covenant restraining trade generally. *Morris v. Colman*. -

**XVIII. 437**

## TIMBER.

1. Tenant for life without impeachment except wilful waste entitled to interest of the produce of decaying timber, cut by order: the capital to be invested in land to the same uses.
  2. Expense of inclosure out of the produce of decayed timber, cut by order.
  1. Tenant for life without impeachment of waste farther than wilful waste entitled to the interest of money, produced by the sale of decaying timber, cut by order of Court. As to any farther claim, a question at law, *quære*. The capital laid out in real estate, to be settled to the same uses. *Wickham v. Wickham*. - - - -
  2. On application of all parties the expense of an inclosure was defrayed out of money, produced by sale of decaying timber, cut by order of the Court. - - - -
- See Account (*Mesne Profits* 2.) Copyhold (*Mine* 2.) Estate (*For Life* 3.) Heir 1. 4. Injunction 18. Lunacy 59. 60. Tenant for Life 2. Trespass 3. Waste.

XIX. 419

XIX. 423

## TIME.

1. { From an act or event whether the day is inclusive, or
2. { not, depends on circumstances. The day of presenting a bill of exchange exclusive.
3. Fraction of day rejected more generally than by the Civil Law.
1. No general rule, in computing time from an act or event, that the day is to be inclusive or exclusive; depending on the reason of the thing, according to the circumstances. *Lester v. Garlund*. - - - -
2. In the time from the presentment of a bill of exchange the day of presentment exclusive. Other instances; where the day of an act done, or an event happening, is sometimes inclusive; sometimes exclusive. - -
3. Our law rejects fractions of a day more generally than the Civil Law does. - - - -

XV. 248

XV. 254

XV. 257

See Condition 11. Contract 82. 85. 99. 106. (*Specific Performance* 33. 36. 60.) Corporation 6. Executor 84. Fraud 41. Laches. Limitation. Mortgage 56. Presumption.

## TITHE.

1. Rector's bill dismissed on apparent title (the commencement not appearing) by conveyances from 37 Hen. 8. with evidence of reputation, and notice to plaintiff; who purchased the advowson; and was lessee of the tithes.
2. If the least doubt, no account, until the right established at law.
3. Account of one-third on admission; dismissal as to the rest on title by answer and evidence under a grant by 2 Eliz. Plaintiff declining to try the right.

4. Issue on *modus*; though apparently rank.
  5. } Rankness evidence only. Distinction as to a farm
  6. } *modus*.
  7. } Rankness a question of fact. The *quantum* not decisive,
  8. } if immemorial.
  9. In *London*. After two trials in bar in favour of the right by the Decree and Stat. Hen. 8. a new trial refused.
  10. Decree against defendant, alleging one *modus*; and proving another.
  11. Customary payment need not be immemorial.
  12. } Bill to establish customary payment not on demand
  13. } without suit. The Ordinary must be a party.
  14. In *London* decreed under Stat. Hen. 8, as to warehouses of *East India Company*.
  15. Reference for consolidating causes not of course, before Answer.
  16. Prescription in *non decimando*, &c. no defence to a bill.
  17. Issue on *moduses*.
  18. *Modus* of 1*d.* for all hay.
  19. *Modus* for every garden, &c. in lieu of all tithes.
  20. *Modus* bad for uncertainty as to the quantity of land.
  21. *Modus* disproved.
  22. *Modus*, proved as to part only, void.
  23. 1*d.* for hay a good *modus*.
  24. *Modus* for turnips bad.
1. Bill to establish the rector's right to tithes and for an account: the defence, though informally stated as a prescription *de non decimando* in a *que estate*, was as to two-thirds possession by the Lord of the manor under an apparent title by various conveyances, &c. stated by the Answer, from 37 Hen. 8. of the lands with tithes generally, or two-thirds specifically, with evidence of reputation and notice to the plaintiff; who had purchased the Advowson; and was lessee of the tithes; but the commencement of the title did not appear: the bill was dismissed with costs. *Strutt v. Baker*. - -
  2. An account of tithes is consequential upon the legal right; and therefore if the least doubt is thrown upon it by *prima facie* evidence, the account cannot be decreed till the right is established at law. *Foxcroft v. Parris*. -
  3. Bill for tithes. Answer admitting the right to one-third; and submitting to account; and claiming the other two-thirds under a title derived from a grant by Queen Elizabeth; submitting to be examined upon interrogatories; but not setting forth a description of the lands. The defendants, having gone into evidence in support of their claim, pressed to have the bill dismissed generally: the plaintiff pressed for a general account. The *Master of the Rolls* decreed an account as to one-third; and as to two-thirds, the plaintiff declining to try the right at law, dismissed the bill. *Foxcroft v. Parris*. - -

II. 625

V. 221

V. 221

4. Issue directed on a *modus* for certain lands, amounting to 1s. per acre for all tithes; notwithstanding the apparent rankness. A new trial granted. Verdict for plaintiff, against the *modus*; and an account decreed. *O'Connor v. Cook.* - - - - - VI. 665. VIII. 535
5. Rankness of a *modus* is only evidence; not an objection in point of law. - - - - - VI. 672
6. Distinction as to rankness between a *modus* for tithes of particular things and a farm *modus.* - - - - - VI. 672
7. Rankness of a *modus* a question of fact. - - - - - VIII. 536
8. Upon the rankness of a *modus* the *quantum* of the payment is not decisive, if immemorially paid. - - - - - VIII. 539
9. After two trials at bar in favour of the claim of the Warden and Minor Canons of *St. Paul's* to tithes at 2s. 9d. under the Decree and Act of Parliament, 37 H. 8. upon an issue, whether any and what less sum had been paid, a new trial refused; though evidence was rejected, that ought to have been received, material; this being in the discretion of the Court, for its information; and all the evidence, though proving, that less than 2s. 9d. had been paid, not shewing any certain payment in lieu of tithes. Whether the issue ought to have been directed in the cross cause, *quære*: 1st, as being upon the bill of mere lessees, not owners: 2dly, as tending to proof of a payment, different from that relied upon by their Answer, and the establishment of which was prayed by their bill? *Warden and Minor Canons of St. Paul's v. Morris.* - - - - - IX. 155
10. Defendant to a bill for tithes puts himself upon one *modus* in his defence; and proves another. There must be a decree against him. - - - - - IX. 164
11. Customary payment in lieu of tithes need not be immemorial. Whether eight years sufficient, or what other period, *quære.* - - - - - IX. 165
12. A bill to establish a customary payment in lieu of tithes does not lie upon a simple demand of tithes, without suit. *Gordon v. Simpkinson.* - - - - - XI. 509
13. To a bill to establish a customary payment in lieu of tithes the Ordinary must be a party. *Gordon v. Simpkinson.* - - - - - XI. 509
14. Decree under the statute 37 Hen. 8, for payment of tithes in *London*, as to warehouses, erected by the *East India Company* upon the scite of old buildings, and occupied by them, at 2s. 9d. in the pound upon the value to be let; without an issue: no specific, customary, payment in lieu of tithes being alleged. *Antrobus v. East India Company.* - - - - - XIII. 9
15. Reference, whether several tithe causes should be consolidated, not of course, before Answer. *Keighley v. Brown.* - - - - - XVI. 344
16. To a bill for tithes, even by a lay impropriator, prescription *in non decimando*, or presumption from mere re-



tainer, without colour of title, is no defence; and will not be sent to law. *Berney v. Harvey.* - - -

XVII. 119

17. Issue directed to try *moduses*: alleged variations in some of the payments appearing to be only irregularities in the collection. *Blackburn v. Jepson.* - - -

XVII. 473

18. As to a *modus* of 1*d.* for tithe of all hay, *quære.* *Blackburn v. Jepson.* - - -

XVII. 473

19. *Modus* for every garden and orchard, in lieu of all tithes of all titheable matters or things arising therein, sufficiently laid without stating them to be ancient gardens, &c.; and not too extensive. *Blackburn v. Jepson.* -

XVII. 473

20. *Modus* of 4*d.* by each occupier, having lands, cultivated by three or more horses, usually called a plough, in lieu of all small *prædial* tithes of all such lands so cultivated, bad for uncertainty as to the quantity of land. *Blackburn v. Jepson.* - - -

XVII. 473

21. *Modus* disproved by the evidence: for every cow producing a calf 1½*d.*; or if no calf 1*d.*: the evidence proving a higher payment beyond a certain number: Account of tithes decreed. *Blackburn v. Jepson.* -

XVII. 473

22. *Modus*, supported by the evidence in part, not as to the rest, and capable of distinction, void *in toto*: viz. so much for every calf, up to seven, proved; and different sums proved from those laid as to other numbers. -

XVII. 478

23. Annual payment of 1*d.* by each occupier for tithe of hay, a good *modus.* *Leyson v. Parsons.* - - -

XVIII. 173

24. *Modus* for turnips bad; being of too recent introduction into this country to be the subject of immemorial usage. *Leyson v. Parsons.* - - -

XVIII. 173

See Account (*Mesne Profits* 2.) Contract 41. Jurisdiction 9. Pleading 14. Purchase 15.

### TITLE.

1. Distinction on the persons, entitled to the purchase-money under a devise in trust to sell, not being parties, as an Exception to the Report in favor of the title; or as an objection to the conveyance.

2. No Exception, that the reversion in fee might have been disposed of.

3. Abstract may be complete long before the title.

1. Bill by devisees in trust to sell for specific performance of an agreement to purchase: Exception to the Report in favor of the title, that the persons entitled to the purchase-money, subject to debts, legacies, and other charges, were not parties to the suit: the *Lord Chancellor* was of opinion, they ought not to be parties to the conveyance: and if they were, their covenant ought to extend only to their own acts and those of the devisor: not to a general warranty, without a special contract for it: but as the point must come properly upon objections to the conveyance, the Exception was over-ruled upon

the form. Exception, that the persons entitled to the purchase-money, subject to the charges, were not parties to the conveyance, over-ruled. *Wakeman v. The Duchess of Rutland.* - - - - -

III. 233. 504

2. Exception to a Report in favour of a title on the ground, that the reversion in fee might have been disposed of, so as not to have descended to the heir, from whom the title was derived, over-ruled. *Sperling v. Trevor.* - -

VII. 497

3. The abstract is complete, when it appears, that upon certain acts done the legal and equitable estates will be in the purchaser; though long before the title can be completed. *Lord Braybrooke v. Inskip.* - - -

VIII. 417

See *Bankrupt* (Assignee 26.) *Contract* 104. *Practice* 143. 174. 281. *Purchase* 15. 16. 39. 40. *Vendor, &c.*

## TITLE-DEEDS.

1. Incident to the possession of freehold estate.

2. { In possession of devisees how far to be inspected by  
3. { the heir in tail. Heir at law has no equity except  
to remove incumbrances.

4. Delivered out of Court on application of trustees and tenant for life.

1. Title-deeds are incident to the possession of a freehold estate. - - - - -

III. 225

2. An heir at law has no equity except to remove incumbrances in the way of his legal right: he cannot call for an inspection of deeds in the possession of the devisees. *Lady Shaftesbury v. Arrowsmith.* - -

IV. 66

3. Bill by heir in tail against devisees: on motion an inspection was ordered of all deeds of settlement, admitted to be in the possession of the defendants, creating estates in tail general; but no farther. *Lady Shaftesbury v. Arrowsmith.* - - - - -

IV. 66

4. Title-deeds delivered out of Court upon the application of the trustees and the tenant for life. *Duncombe v. Mayer.* - - - - -

VIII. 320

See *Deed* 1. 2. *Lien* 12. 13. *Pleading* 1. (*Demurrer* 16.) *Purchase* 9. 17.

## TOLLS.

1. *Indebitatus Assumpsit* lies.

1. *Indebitatus Assumpsit* lies for Tolls. - - - - -

XIII. 279

## TOMBSTONE.

See *Evidence* (*Pedigree* 4. 6.)

## TRADE.

See *Domicil* 5. *Injunction* 61. *Partner.*

## TRADE, LICENSED.

See *Alien* (*Enemy* 5. 6.)

## TRADE, OFFENSIVE AND UNWHOLESOME.

See *Nuisance* 2.

## TRADE, RESTRAINT OF.—TRIAL.

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### TRADE, RESTRAINT OF.

See *Theatre* 5.

### TRADE, USAGE OF.

See *Bankrupt* 49. *Copyright* 13. *Interest* 32. *Vendor and Vendee* 23.

### TRADESMAN AND CUSTOMER.

See *Account* 6.

### TRADITION.

See *Evidence (Pedigree)* 6.)

### TRANSFER OF STOCK.

See *Bank of England* 3. 4. *Stock*.

### TRAVERSE OF INQUISITION.

See *Escheat* 2. *Lunacy* 17. 18. 20. 21. 26. 27. 30. 63. 65. 69.

### TREATY.

See *Jurisdiction* 2.

### TREES.

See *Timber*.

### TREES, ORNAMENTAL.

See *Copyhold (Mine)* 2.) *Injunction* 4. *Landlord and Tenant* 9. *Waste* 32.

### TRESPASS.

1. Not for mesne profits against the executor.
  2. Injunction in.
  3. Exceeding a limited right to take stone from a quarry treated as waste.
  4. Account for trespass after death.
- |   |           |            |
|---|-----------|------------|
| 1. No action of trespass for mesne profits against the executor.  | - - - - - | VI. 86     |
| 2. Injunction in trespass.  | - - - - - | VIII. 90   |
| 3. The jurisdiction against waste by injunction and account applied to trespass, by exceeding a limited right to enter and take stone from a quarry: being a destruction of the inheritance; as in the case of timber, coal, &c.: and the distinction between waste and trespass therefore disregarded. <i>Thomas v. Oakley</i> . | - - - - - | XVIII. 184 |
| 4. Formerly, before injunction was applied to the case of trespass, upon the death of the party an account was given: the trespass dying with the person.   | - - - - - | XVIII. 186 |
- See *Fraud* 37. *Injunction* 8. 15. 16. 17. 41. 42. 43. 55. *Waste* 15.

### TRIAL.

1. Bill, though retained for a trial, may be dismissed.
  1. It is not a necessary consequence, that the bill will not be dismissed, because it has been retained for the purpose of a trial at law.
- |           |         |
|-----------|---------|
| - - - - - | VI. 225 |
|-----------|---------|
- See *Injunction* 32. *New Trial* 6. 7. *Practice* 345. *Tithe* 9.

27. From legacy to executor for his care.
28. Of specific chattel, with express engagement to restore; and an action prevented by fraud.
29. For maintenance of a minister of a chapel, to be elected by the inhabitants, and approved by the Lord of the Manor.
30. In tail under words, that would create it at law.
31. For merger the interests must be the same.
32. Analogy to legal estate.
33. Charge obtained by trustees under unfavorable circumstances for a bad security taken by them, not enforced.
34. Right of *cestui que* may be varied by the situation, not by the act, of trustee.
35. Of personal property: no object existing, at the Crown's disposal.
36. } Executors and Receiver discharged from a loss by
37. } failure of the banker.
38. Property purchased by the trustee.
39. By devise of copyhold to *A.* and his heirs in trust for *B.* and his heirs: on death of *B.* without heir no equity for the heir of *A.*
40. } Of residue for next of kin by legacy to one of two ex-
41. } ecutors for his care: wherever by declaration or
41. } plain inference they are not intended to take bene-
41. } ficially: in the former case evidence not admitted.
42. Discharge prevented by notice.
43. The object failing no equity between representatives.
44. Of residue for next of kin by specific legacy to executor.
45. One trustee refusing to join in the receipt, having released and conveyed to the co-trustee, instead of merely renouncing: Purchaser discharged.
46. Trustee charged with interest.
47. Not from mere purchase by trustee to purchase dying without assets.
48. Of residue for next of kin on intention to dispose of it not executed.
49. For separate use.
50. Option to *cestui que trust* on breach by sale of stock.
51. Implied from legacy to father the better to enable him to provide for children.
52. Female trustee, marrying a foreigner, discharged.
53. Of residue for next of kin against executors, a partnership in *London*, and attornies, executors, and guardians in *Denmark* and *India*.
54. Of residue undisposed of for next of kin: not unless
55. } a strong presumption against executor; as by a le-
56. } gacy, not by way of exception. Ground of admitting
57. } evidence.
58. Trustee for infants, charged with incautions, though innocent, payment, permitted to try it.
59. Of residue for next of kin on equal legacies for mourning to executors.
60. Did not pass by a general devise. (See Vol. III. p. 339, note.)

61. Purchase by trustee for sale subject to the option of a re-sale unless under application to the Court.
62. One trustee under Act of Parliament gone abroad, having released, and no provision for a change, reference for a new one.
63. Option to *cestui que trust* on breach by sale of stock.
64. The number of trustees to present to a living not being filled up, presentation by heir of the survivor not prevented without a special ground; but provision made for the future.
65. Demurrer to bill against residuary devisees and executors, suggesting a secret trust, over-ruled.
66. Trustee by delivering title-deeds enabling tenant for life to mortgage. One witness against the answer.
67. Trustee not charged with a loss by failure of an agent, with whom the money was deposited pending the change of a trustee.
68. From abuse of confidence.
69. Reference on motion for inquiry, and to settle a release to trustee.
70. Trustees charged with loss by negligence.
71. Purchase of the property by the trustee subject to the option of re-sale.
72. Generally will not fail with the trustee.
73. Not from recommendation unless the objects and subject are certain.
74. } Of the residue for the next of kin. Presumption from
75. } legacy to executor may be rebutted.
76. { Trustee not controlled, if no improper conduct, &c.:
77. { except in exercising the power of appointing a new trustee.
78. Allowances under a general trust to set and manage, though a commission under the Will as a satisfaction.
79. Provision for substitution on death of one trustee satisfied by a substitution of two or death of both.
80. Indemnity of trustees personal to them.
81. Executors in trust, one also a trustee, not entitled beneficially in default of a declaration of trust.
82. }
83. } Principle of the rule as to purchase by the trustees, &c.
84. On recommendation, &c. if the objects and subject certain.
85. Estate passes under a general devise; unless intent to the contrary.
86. Trustees charged with a breach: one only receiving the benefit.
87. { Purchase by trustee established; especially on the
88. { information and management of *cestui que trust*.
89. { Grounds for supporting it.
89. Requisites to constitute trust.
90. Trust estate not passing by general devise on intention inconsistent.
91. Trustee or next friend entitled to fair expenses as just allowances.

92. By purchase in another's name, not wife or child ; unless the presumption repelled.
93. )
94. { Principle, ground, limit, and instances, of the rule as
95. { to purchase by trustees, &c.
96. )
97. Trustee charged for misrepresentation to purchaser. Jurisdiction equitable ; at least concurrent.
98. Distinguished from gift.
99. Not on request, &c. unless the objects and subject certain.
100. Trustee buying the property. Effect of acquiescence.
101. { Trustee charged ; though not receiving. Exception
102. { from notice and acquiescence. Distinction from executor.
103. Executor to tenant by sufferance, &c. obtaining an interest.
104. To raise by sale or sales, mortgage or mortgages ; whether trustee, having mortgaged, can sell to pay it.
105. Purchase by trustee from *Cestui que trust* established.
106. Charged for misrepresentation of investment with the option of 5 per cent. or the profit.
107. Renewable lease consistent with covenant to let and manage to the best advantage. Distinction as to charity.
108. Purchase by trustee for sale set aside.
109. Not under bequest for such purpose as he shall think fit.
110. By purchase in another's name, except advancement by parent. Does not give way to slight circumstances.
111. According to the consideration : not the conveyance. Notice.
112. Not disappointed by failure or negligence of trustee.
113. Trust and power : the discretion limited to the trustees : and therefore executed by the Court for the next of kin by the Statute.
114. { Trustees to preserve remainders joining in recovery,
115. { a breach, generally.
116. Trustees and executors charged for negligence. Distinction between the two characters.
117. Not from mere purchase by trustee to purchase, dying without assets.
118. On precatory words.
119. Secret for charity : heir entitled to an issue.
120. From words of confidence.
121. Purchases no substitution under power to sell and invest to the same uses, without a trust, agreement, &c.
122. Costs to mere trustee by consignment ; as to plaintiff in interpleader ; not as between attorney and client.
123. Term devised on trust and after expiration, &c. in strict settlement, and no trust declared, decreed to attend the inheritance according to the limitations of the Will, on intent to devise immediately, subject to the term.
124. Trustee's power more limited than executor's.

125. In equity undertaking equivalent to execution. Covenant by the general words.
126. Tenant for life, joining in breach, first answerable.
127. } Under recommendation by Will; only if the objects
128. } and subject are certain.
1. Account decreed against a trustee, who, having engaged the trust property in an adventure, afterwards renounced it for the trust, and declared it to be his own account; though no part of the trust money actually laid out. *Wilkinson v. Stafford.* - - - - -
  2. Trustee not answerable for having applied the trust property even to what turned out a losing adventure; if without fraud or negligence. - - - - -
  3. Trustee not answerable for having engaged the infant's name in an adventure; if, afraid of the consequences, he does not engage the property. *Contrà Morton Eden's case*, in the *House of Lords.* - - - - -
  4. Trustee, having engaged trust property in an adventure, cannot sell either to himself or another. - - - - -
  5. The Court views trustees with jealousy; and in case of two estates, one in trust, the other belonging to the trustee, will not permit him to act for his own or the infant's benefit, as he pleases. - - - - -
  6. Where necessary to come to equity to raise an interest by way of trust, there must be at least a meritorious consideration. - - - - -
  7. Residuary legatee dying in life of testator, executors are trustees of the residue for the next of kin; though no legacy to them, except £10 to one for mourning. *Bennet v. Batchelor.* - - - - -
  8. Executor trustee of the surplus for next of kin where both had legacies. *Kennedy v. Stainsby.* - - - - -
  9. If it is necessary for *A.* to keep money at his banker's, and he uses *B.*'s money for that, it is making advantage of it. - - - - -
  10. Trustees are mere stake-holders; and cannot be affected with more than they actually received without wilful default. *Pybus v. Smith.* - - - - -
  11. Tenant for life, subject to a trust term, not let into possession before account; nor till the trust is executed, unless on paying into Court a sum sufficient to answer it; or where the best way of performing the trust appears to be by letting him into possession. *Blake v. Bunbury.* - - - - -
  12. Payment in name of *A.* with his money raises a trust: but it is an equity; which may be rebutted by evidence. - - - - -
  13. Trustee, mistaking his power, sold stock without authority: decreed to replace it immediately; if at a less price, to invest the surplus in the same stock to the same uses. *Earl Powlet v. Herbert.* - - - - -
  14. Bill being dismissed without costs, as a hard case, parties

I. 32

I. 41

I. 42

I. 42

I. 43

I. 55

I. 63

I. 66, a.

I. 90

I. 190

I. 194

I. 275

I. 297



made trustees without their knowledge, and as such being necessary parties to the bill, cannot have costs against plaintiff; but left to their remedy against their principal: otherwise perhaps, if plaintiff had prevailed; because then those costs might have been given over against other defendants. (See the note, page 834.)

*Brodie v. St. Paul.* - - - - - I. 326

Residue unbequeathed; codicil disposing of it, but with blanks for names, &c. not filled up, and unexecuted, found with the Will; and contradictory evidence of intent; executor, having a specific legacy, trustee for the next of kin. *Nourse v. Finch.* (See No. 20.) -

I. 344

Trust legacy cannot lapse by death of trustee. - -

I. 475

Trustee charged with interest for wilful misconduct, as not paying money into Court pursuant to an order: but slight difference in the sums admitted and reported in his hands is not sufficient; and farther inquiry, whether he made interest, not to be directed, unless a strong case. *Sammes v. Rickman.* - - - - -

II. 36

Trustee not deprived of costs for slight misconduct, in respect of which he is charged with interest. *Sammes v. Rickman.* - - - - -

II. 36

A corporation, being trustee, is in this Court the same as an individual. - - - - -

II. 46

Residue unbequeathed: codicil disposing of it, but with blanks for names, &c. not filled up, and unexecuted, found with the Will; and contradictory evidence of intent: executor having a specific legacy is a trustee for the next of kin. *Hornsby v. Finch.* (See No. 15.) -

II. 78

A legacy will not take away executor's right to the residue; unless inconsistent with the supposition, that he is to take the whole. - - - - -

II. 80

Testator directed a new trustee to be appointed, if either should die or become incapable of acting: one absconded charged with forgery, but was not outlawed: referred to the Master to appoint a new trustee. *Mil-lard v. Eyre.* - - - - -

II. 94

Where testator desires, all his money may be disposed of as land, or *vice versa*; that is a direct trust; and will be executed in equity. - - - - -

II. 176

The rule, that money to be laid out in land shall be considered as land, holds only, where the quality of land is imperatively fixed on the money. - - - - -

II. 184

Costs refused to a trustee, setting up a trust different from what it really was: but general misconduct, &c. is not a sufficient ground. *Ball v. Montgomery.* - - -

II. 192

In case of a trust the estate in the trustees will support contingent remainders. - - - - -

II. 234

Legacy to an executor for his care: that is equivalent to a declaration of trust; therefore evidence is not admissible. - - - - -

II. 473

28. The Court will decree a specific chattel to be delivered up without measuring the value, where from its nature there can be no compensation by damages. In this instance the defendant retained possession after the expiration of a limited time, for which he had received it upon a special trust and an express engagement to restore; and an Action, which had been brought, was rendered ineffectual by the release of two of the owners, combining with the defendant. *Fells v. Read.* - - -

III.

29. Under a Commission of Charitable Uses it was agreed, that copyhold lands, formerly surrendered for maintenance of a minister in *W.* chapel, should be let, and the rents employed towards maintenance of the minister to be chosen and appointed by the inhabitants, and presented and allowed by the Lord of the manor; who upon complaint might give the minister half a year's warning; and if he had not reformed by that time, might remove him; the Information prayed, that the Lord might be decreed to allow and approve the candidate, who had the majority of votes; which was refused on the ground of misconduct; and, the evidence clearly proving it, a new election was directed; upon which, the same candidate being returned, and producing strong affidavits of good conduct for the last six years, the decree, stating the affidavits, declared, that in consequence of them the Relator deserved the approbation of the trustees. *Attorney-General v. The Marquis of Stafford.* - - - - -

III.

30. A limitation, that will create an intail at law, will have the same effect upon an equitable estate; therefore a devise in fee to pay debts, and then to the use of *A.* in trust for *B.* for life, remainder to the heirs male of his body, is an estate tail in *B.* *Brydges v. Brydges.* - - -

III.

31. To create a merger of the equitable, in the legal, estate by their union the interest in each must be the same: an equitable recovery therefore barred an equitable remainder in tail in the person, who had the whole legal fee. *Brydges v. Brydges.* - - - - -

III. 1  
III. 1

32. Analogy between legal and equitable estates. - - -

33. Trustees, having laid out the fund upon a bad security, obtained from the debtor under circumstances unfavourable and to the prejudice of other creditors a charge on his estate under a power; their bill to enforce the charge against the son, tenant in tail under the marriage settlement, was dismissed with costs. *Radbury v. Hunter.* III. 187.

34. No act of the trustee can vary the *trust*: but his situation may vary the *trust* is his heir, the right to the *trust* which dies first. - - -

35. Bank Stock was purchased by the Government of Maryland before the American war

as, where the Cestui  
dower depends upon  
the Government of Mary-  
land, and vested in trustees

for the discharge of certain bills. After the peace upon a Bill under an assignment by the new State of part of the stock, as a compensation to mortgagees of lands, that were confiscated, the fund, subject to that assignment, was claimed by the new State; and, there being no claim under the bills, the whole was claimed by the surviving trustee beneficially; also by the Proprietary under the old Government; and a specific lien was insisted on in respect of losses by confiscation, occasioned by the refusal of the trustees to transfer: held, that there was no lien; that the new State could only take such rights of the old as were within their jurisdiction; that the claims of the plaintiff, the State, and in respect of the confiscations, were the subject of treaty; not of municipal jurisdiction; and the fund, no object of the trust existing, must be at the disposal of the Crown.

*Barclay v. Russell.* - - - - - III. 424

Executors, directed with all convenient speed to pay debts and lay out the residue in mortgages, held not answerable for a loss by the insolvency of the testator's banker, after selling negotiable securities, deposited with him by the testator. *Rowth v. Howell.* - - -

III. 565

Receiver not liable by the failure of the testator's banker at *Bristol*; with whom the Receiver, when going to *London* to pass his accounts, deposited the money, intending to draw it. - - - - -

III. 566

There is no general rule, that a trustee to sell shall not be himself the purchaser; but he shall not thereby gain profit to himself; one of several trustees to sell, having purchased, and afterwards sold at a profit, was therefore decreed to account for that profit with costs.

*Whichcote v. Lawrence.* - - - - - III. 740

Devise of a copyhold (duly surrendered) to *A.* and his heirs in trust for *B.* and his heirs: upon the death of *B.* without heirs, the heir of the trustee has no equity to compel the Lord to admit him; and his bill was dismissed without costs. *Williams v. Lord Lonsdale.* -

III. 752

One executor being by a legacy for his care clearly a trustee of the residue for the next of kin, the other must be a trustee also. *White v. Evans.* - - -

IV. 21

Where it appears by express declaration or plain inference, that executors are not intended to take the residue beneficially, they are trustees. A legacy is only one mode of shewing it; and, if expressed to be for care and trouble, parol evidence cannot be received. - - -

IV. 22

A general devisee in trust for the testator's widow and children, having received from the widow, who was executrix, on her going abroad to recover part of the property bonds for a debt from him and his partners to the estate, in settling the affairs of the partnership on the retirement of one partner, who had notice of the trust,

- |     |   |       |
|-----|---|-------|
|     | delivered to him the bonds to be cancelled without the privity of the <i>Cestuis que trust</i> ; continuing to make remittances on that account from the funds of the new partnership: the partner, who retired, is not discharged. <i>Dickinson v. Lockyer.</i> - - - - -  | Vol.  |
| 43. | The Court will not interfere between representatives by changing the nature of property in execution of a trust, the object of which has failed. <i>Croft v. Slec.</i> - - -  | IV.   |
| 44. | Executor, having specific bequests by Will and Codicil, held a trustee for the next of kin as to the residue undisposed of. <i>Holford v. Wood.</i> - - - - -   | IV.   |
| 45. | One trustee for the sale of an estate, having released and conveyed to his co-trustee, refused to join in the receipt of the purchase-money: upon the special expression of the deed the purchaser was not held to the agreement with the remaining trustee: it would have been otherwise, if one had merely renounced. <i>Cremes v. Dicken.</i> - - - - -  | IV. 1 |
| 46. | Trustee charged with interest. <i>Younge v. Combe.</i> -  | IV. 1 |
| 47. | Trustee for the purchase of land died without personal assets, but having purchased land: the estates were held not liable to the trust; the circumstances affording no presumption, that they were purchased in execution of the trust. <i>Perry v. Phelps.</i> - - - - -  | IV. 1 |
| 48. | Testatrix by Will appointed an executor; and gave him a legacy: afterwards by a testamentary paper she directed the residue to be disposed of according to private instructions to him; and, having by a subsequent Codicil added another executor, died without giving any instructions: the executors are trustees of the residue for the next of kin. <i>Mordaunt v. Hussey.</i> - - - - -   | IV. 1 |
| 49. | Settlement upon marriage of stock, the property of the wife, in trust from time to time to receive the dividends, and pay them into the hands of the wife for her sole and separate use, her receipt to be a discharge; after her decease, if the husband should survive, for him for life; and after the decease of the survivor to transfer the principal among the children according to her appointment by Will; in default thereof, equally; if no children, according to her appointment by Will. The trustees with the privity of the wife, sold the stock; and paid the money to the husband, taking his bond of indemnity: he died insolvent. Upon the bill of the widow and children the fund, being replaced by the trustees, was transferred to the <i>Accountant-General</i> upon the trusts of the settlement; the trustees to pay the dividends to the widow from the death of the husband, with costs (a). <i>Whistler v. Newman.</i> - - - | IV. 1 |

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(a) See the note, Vol. IV. page 146.

- Trustee of stock sells it: the *Cestui que trust* has an option to have the stock or the produce with interest. IV. 497
- Legacy to a father the better to enable him to provide for his younger children: he consented to secure the capital; but was held entitled to the interest. *Brown v. Casamajor*. - - - - - IV. 498
- Decree discharging from a trust a woman, who had married a foreigner; though the Answer denied an intention of quitting the kingdom; and stated her desire of continuing in the trust. *Lake v. De Lambert*. - - - - - IV. 592
- A partnership in *London*, being appointed, not individually, but as a firm, executors and guardians, claimed the residue undisposed of in exclusion of persons, appointed attorneys, executors, and guardians, in *Denmark*; and others appointed attorneys and executors in *India*; decreed a trust for the next of kin; and it was referred to the Master to appoint a guardian. *De Maxar v. Pybus*. - - - - - IV. 644
- Bequest of various particulars, comprising all the testator's personal estate, to his wife for life: then, after specifically disposing of and charging with legacies certain parts after the death of his wife, he appointed her executrix, she paying his debts and funeral expenses: held a resulting trust as to the residue; there being no farther disposition, and no evidence. *Dicks v. Lambert*. IV. 725
- Executor takes the residue undisposed of, unless there is a strong and violent presumption against him. A legacy does afford that presumption, unless there are special circumstances. - - - - - IV. 729
- Ground of admitting parol evidence between the executor and next of kin as to the residue undisposed of. - - - - - IV. 730
- Bequest to executor by way of exception is not sufficient to bar him from the residue undisposed of. - - - - - IV. 731
- Executor in trust for infants; having paid under a written obligation, executed abroad, though in possession of a counter-obligation to re-pay part with interest at the death of the party, acknowledging that to be so much more than the debt, and neither instrument having been transferred, was charged as having paid incautiously, though innocently; and therefore he was permitted to try the question at law. *Vez v. Emery*. - - - - - V. 141
- Executors, having legacies of £20 a-piece to buy mourning-rings, and equal specific legacies, were upon the former held trustees of the undisposed of residue for the next of kin. *Nisbett v. Murray*. - - - - - V. 149
- A general devise by a trustee did not pass the trust estate (a). *The Attorney-General v. Buller*. - - - - - V. 339
- There is no rule, that a trustee to sell cannot be the purchaser: but, however fair the transaction, it must be

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(a) See the note, Vol. III. page 339.



- subject to an option in the *Cestui que trust*, if he comes in a reasonable time, to have a re-sale; unless the trustee to prevent that purchases under an application to the Court. *Campbell v. Walker.* - - - - - Vol.
62. One of the trustees under an Act of Parliament being gone abroad, and having released, there being no provision for the change of trustees, upon a bill it was referred to the Master to appoint a new trustee. *Buchanan v. Hamilton.* - - - - - V.
63. Executor and trustee, having been guilty of a breach of trust by selling out stock and dealing improperly with the money, the *Cestuis que trust* have an option to have the stock replaced, or the money produced by the sales, with interest at 5 per cent., or more, if more has been made by it, and the costs occasioned by his misconduct. *Pocock v. Reddington.* - - - - - V.
64. Where by neglect the number of trustees in a trust to present to a Living was not filled up at the time of an avoidance, the Court would not by Injunction prevent the effect of a Presentation under the legal title of the heir of the surviving trustee, without a special ground: but the Court will take care as to the future, that the trust shall be properly filled up. *Attorney-General v. Bishop of Litchfield.* - - - - - V.
65. Bill by the heir at law against residuary devisees, legatees, and executors; suggesting a secret trust, undertaken at the request of the testator, either not legally declared, or, if so, void as to the real estate, and written acknowledgments by the defendants of an intended trust for charitable purposes; the Will also, by equal legacies to them and some particular expressions importing a trust. A general demurrer to the discovery and relief was over-ruled. *Muckleston v. Brown.* - - - - - VI.
66. Bill to charge a trustee, as having by delivering the title-deeds to the tenant for life enabled him to make a mortgage of a settled estate as tenant in fee, dismissed; the fraudulent purpose of enabling him to mortgage resting upon the evidence of a single witness, and being positively denied by the Answer, as far as the allegations of the bill gave an opportunity of answering; but without costs, on the ground of negligence; and without prejudice to an Action; and with an option to the plaintiff to take an Issue. *Evans v. Bicknell.* - - - - - VI.
67. Trustee not charged with a loss by the failure of the banker to the agent in whose hands the money was deposited, pending a transaction for the change of a trustee. *Adams v. Claxton.* - - - - - VI.
68. General rule, that he, who bargains in matter of advantage with a person placing confidence in him, is bound to shew, that a reasonable use has been made of that confidence. - - - - - VI.



69. On motion a reference directed to inquire, whether the defendant, a trustee, remains accountable for any acts done by him as trustee; and, if not, to settle a release. — *v. Osborne.* - - - - - VI. 445
70. Trustees charged with a loss occasioned by their negligence, though without any corrupt motive. The costs followed of course. *Caffrey v. Darby.* - - - VI. 488
71. General rule upon a purchase of trust property by the trustees on their own account, that at the option of the *Cestui que trust* it shall be resold, being put up at the price, at which the trustees purchased; who, if there is no advance, shall be held to their purchase. *Lister v. Lister.* - - - - - VI. 631
72. In general cases trusts will not fail by the failure of the trustee. - - - - - VI. 663
73. Words of recommendation not considered imperative, unless the objects and subject are certain. - - - VII. 85
74. Executors, though not having legacies, held trustees of the residue for the next of kin. *Urquhart v. King.* - VII. 225
75. A legacy to an executor raises a presumption against his legal title to the residue; which he may rebut by evidence. - - - - - VII. 229
76. The Court refused to order Court Rolls, &c. to be delivered by the Steward, appointed by the trustees to the Steward of the testamentary guardian: there being no suggestion of improper conduct or advantage from the change. *Mott v. Buxton.* - - - - - VII. 201
77. The Court controls a trustee in the exercise of a power to appoint new trustees, though given in very large words. *Webb v. The Earl of Shaftesbury.* - - - VII. 480
78. A trustee and executor, though taking under the Will a commission, as a satisfaction for his trouble, entitled to allowances under a general trust to set and manage, as he should think proper, and out of the rents and profits to pay all rates and taxes, charges of repairs, stewards', bailiffs', and game-keepers' salaries and expenses, and all other charges and expenses he should think proper. But he was not allowed to appoint an establishment, game-keepers, &c. except as the due management required. Inquiry therefore directed as to that; and whether the liberty of sporting during the continuance of the trust could be let for the benefit of the *Cestui que trust*; if not, the game belongs to the heir. *Webb v. The Earl of Shaftesbury.* - - - - - VII. 480
79. A provision in case of the death of a trustee for the substitution of another, and a conveyance by the survivor, so that he and the new trustees should be jointly interested in the trust, satisfied by the substitution of two trustees, after the death of both the former, and a conveyance by the heir of the survivor. *Morris v. Preston.* VII. 547



	Vol.	Page
80. The indemnity of the trustees under a deed of trust does not give the persons employed by them a right as creditors against the trust fund. <i>Worrall v. Harford.</i> -	VIII.	4
81. Personal estate bequeathed to trustees upon trust. The executors, one of whom was also one of the trustees, not entitled beneficially, in default of the declaration of trust. <i>Milnes v. Slater.</i> - - - - -	VIII.	295
82. Principle of the rule against purchases of the trust property by trustees, assignees, &c. - - - - -	VIII.	345
83. To set aside a purchase by a trustee of the trust property it is not necessary to shew, that he has made an advantage. Principle of the general rule. - - - - -	VIII.	348
84. Words of recommendation, or precatory, or expressing hope, &c. if the objects and subject are certain, are imperative; and create a trust. - - - - -	VIII.	380
85. By a devise in general terms a trust estate will pass; unless an intention to the contrary can be collected from expressions in the Will or purposes or objects of the testator. <i>Lord Braybrooke v. Inskip.</i> - - - - -	VIII.	417
86. Trustees and executors charged with a loss, occasioned by a breach of trust by joining in a transfer and sale, and lending the produce to a partnership, in which one of them was engaged; the others not receiving any benefit. Decree against all to account for the funds. <i>French v. Hobson.</i> - - - - -	IX.	103
87. Purchase, under a trust for payment of debts, by the trustee, as agent for his father, both creditors in partnership, established under the circumstances; particularly, that the <i>Cestui que trust</i> had full information, and the sole management; making surveys; settling the particulars; fixing the prices, &c. <i>Coles v. Trecothick.</i> -	IX.	234
88. Grounds, on which a purchase by the trustee from the <i>Cestui que trust</i> may be supported. - - - - -	IX.	246
89. Requisites to constitute a trust; sufficient words: a definite subject; and a certain object. - - - - -	IX.	323
90. The rule, that a trust estate will pass by a general devise, confined by objects, appearing upon the Will, inconsistent with that intention. <i>Ex parte Morgan.</i> -	X.	101
91. Trustee, or the next friend of an infant, entitled to fair expenses, beyond taxed costs, under the head of just allowances. <i>Fearns v. Young.</i> - - - - -	X.	184
92. Purchase in the name of another, not a child or wife, a trust for the person advancing the money; unless the presumption from that circumstance is repelled by evidence. <i>Rider v. Kidder.</i> - - - - -	X.	300
93. Principle of the rule, upon which purchases by trustees of the trust property are set aside. - - - - -	X.	385
94. Not necessary, to undo a sale to a trustee of the trust property, to shew, he has made an advantage. Ground of the rule against such purchases; unless the character of trustee is previously shaken off. - - - - -	X.	393

Instances, in support of the rule against purchases of trust property by the trustee. - - - - -	X. 394
Purchase by the trustees of the trust property set aside; not being within the exception to the rule: viz. full information to the <i>Cestui qui trust</i> , and no advantage taken by the trustee of his situation to produce a beneficial bargain to himself. Trust, upon a re-sale, as to the price received. Considerable length of time before the bill had no effect: as it did not distinctly appear, that the <i>Cestui que trust</i> knew, the purchase was made on account of the trustees. <i>Randall v. Errington</i> . - - - - -	X. 423
Trustee charged in respect of a misrepresentation to a purchaser; having notice; and alleging only, that he did not recollect the fact. This is a more proper subject for Equity than Law: at least there is a concurrent jurisdiction. <i>Burrowes v. Lock</i> . - - - - -	X. 470
If a trust is intended, but is not expressed, or is ineffectually created, or fails, the next of kin are entitled; but if the person taking has a discretion, whether to make the application, or not, it is an absolute gift, not a trust. - - - - -	X. 535
No trust upon words of request or recommendation, unless the objects and the subject are certain. - - -	X. 536
Ground of the doctrine as to a trustee buying the trust property; and the effect of acquiescence. - - -	XI. 226
A trustee charged, though he did not receive the money, under the circumstances; having joined in the receipt: the sale unnecessary; and permitting his co-trustee to keep, and act with, the money contrary to the trust. Not charged in respect of the interest of one of the <i>Cestuis que trust</i> , having notice of the breach of trust, and acquiescing. <i>Brice v. Stokes</i> . - - - - -	XI. 319
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An executor to a tenant by sufferance, or at Will, obtaining a larger interest, is a trustee for the residuary legatee; like the case of general occupancy. - - -	XI. 392
Under a trust to raise money by sale or sales, mortgage or mortgages, whether the trustees, having raised the money by mortgage, can afterwards sell to pay off that mortgage, <i>quære</i> . <i>Palk v. Lord Clinton</i> . - - - - -	XII. 48
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108. Trustees for sale purchased through a trustee at an under value; though without fraud, and by auction; and the <i>Cestuis que trust</i> , being infants, incapable of discharging the trustees. The purchase set aside with costs. <i>Sanderson v. Walker.</i>	XIII.	601
109. Bequest to <i>A.</i> for such purposes as he shall think fit is for his own benefit.	XIV.	370
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112. Trust not disappointed by the failure or negligence of the trustee.	XVI.	26
113. Residuary devise and bequest for such of the testator's relations and kindred, in such proportions, &c. as his executors should think proper; recommending and advising his said trustees and executors to give the greatest share to such person and persons, who in their opinion and judgment should appear to them to be his nearest relations and the most deserving; declaring his intention not to control their discretion; but that every thing relative to that disposition, who were his relations and the proportions, should be entirely in the discretion of the said trustees and executors, and the heirs, executors, and administrators, of the survivor of them. A trust, and a power. The ground of the power being personal confidence, it is <i>prima facie</i> limited to the original trustees; not without express words passing to others, to whom by legal transmission the same character may happen to belong; and cannot be executed by the devisees and executors, for that specific purpose only, of the surviving trustee. A trust therefore, executed by the Court for the next of kin at the death of the testator, according to the Statute of Distributions. The real estate, except what was converted in execution of the power, taken by the next of kin as real: the Will not operating a conversion out and out: the representatives therefore, the trust being disappointed, taking the respective estates, as they find them; having no equity against each other. The costs apportioned according to the value of the real and personal estates. <i>Cole v. Wade. Walter v. Maunde.</i>	XVI. 27. XIX.	424

114. Trustees to preserve contingent remainders, joining in a recovery, held, with reference to the circumstances and occasion, no breach of trust. *Moody v. Walters.* - XVI. 283
115. Generally, trustees joining to destroy the contingent remainders, before the tenant in tail is of age, a breach of trust. - - - - - XVI. 307
116. Executors and trustees charged for negligence by joining in a transfer to a co-executor upon his groundless representation, that it was required for debts: but not liable so far as they can prove the application to that purpose; though he possessed other funds, not through them; which funds he wasted. As to the cases, breaking down the distinction between executors and trustees joining in an act, by which one obtains and misapplies the fund, that executors are all liable, trustees not, as the former need not, and the latter must, join, *quære.* (See No. 102.) *Lord Shipbrook v. Lord Hinchinbrook.* XVI. 477. 479
117. Trustee for the purchase of land died without personal assets; having purchased land. If the trust could have been executed during his life, which upon the construction was questionable, yet, no part of the trust fund being traced, and the circumstances affording no presumption, that the purchases were made in execution of the trust, they were held not liable. *Perry v. Phelps.* - - - - - XVII. 173
118. Precatory words held imperative, where the object and subject are certain. - - - - - XVIII. 41
119. Bill by heir, suggesting a secret, void, trust for charity in residuary devisees, but without evidence of a trust expressed, or of an engagement, expressed or tacit, preventing it, dismissed with costs; unless the heir would take an Issue; to which he is entitled. *Pain v. Hall.* - - - - - XVIII. 475
120. Devise to a nephew in fee, "not doubting, in case he "should have no child, but that he will dispose and "give my said real estate to the female descendants of "my sister, in such part or parts, and manner, as he "shall think fit, in preference to any descendant on his "own female line." Trust in the event described for the sister's children. *Parsons v. Baker.* - - - - - XVIII. 476
121. Purchases held not a substitution for estates sold under a power in a settlement to sell, and invest the money in estates to be settled to the same uses: there being no original trust, subsequent agreement, or representation relied on. Account decreed of the money produced by the sale, not of the present value. *Denton v. Davies.* XVIII. 499
122. Costs to defendant, a mere trustee by consignment of goods, as to plaintiff in bill of interpleader, not as between attorney and client, but according to the course of the Court, as between party and party. *Dunlop v. Hubbard.* - - - - - XIX. 205

123.	Devise to trustees for ninety-nine years upon the trusts hereinafter expressed; and from and after the expiration or other sooner determination of the said term, in strict settlement. The term, no trust being declared, decreed to attend the inheritance, according to the limitations of the Will, and no resulting trust for the heir, upon the apparent intention to devise immediate estates, subject to the term: not future estates, expectant on its determination. <i>Sidney v. Shelley.</i> - - -	XIX. 352
124.	One executor can do any act: not one trustee. - - -	XIX. 463
125.	In equity undertaking to execute trusts equivalent to execution of the deed; and the general words "it is declared and agreed" amount to covenant. - - -	XIX. 638
126.	Tenant for life, joining in a breach of trust, answerable in the first instance. - - - - -	XIX. 639
127.	Recommendation in a Will, where the object and subject are certain, amounts to trust. - - - - -	XIX. 644
128.	No trust under words of recommendation and confidence, applied to an uncertain subject; as what shall be left after the death of a person, to whom the property is given in the first instance. - - - - -	XIX. 644

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EXECUTORY.—1.	Execution of covenant in marriage settlement to settle leasehold estates with real, as far as the law would allow.	
2.	Where an act is to be done; as a conveyance.	
1.	Covenant in a marriage settlement to settle leasehold estates in trust for such persons and such and the like estates, ends, intents, and purposes, as far as the law would allow, as declared concerning real estates limited to the first and other sons in tail male, with several remainders: the Court in executing the covenant declared, that no person should be entitled to the absolute property, unless he should attain twenty-one, or die under that age leaving issue male. <i>Duke of Newcastle v. The Countess of Lincoln (a).</i> - - -	III. 387
2.	Where any act is to be done, as a conveyance to be made, the estate is a trust, not a use executed. - - -	VII. 201

RESULTING.—1.	For the heir as to real estate not exhausted.	
2.	For grantor in a deed in consideration of 5s.	
3.		
4.		
5.	For the heir of surplus of real estate beyond the purpose of the devise: of a void or failing devise, and profits undisposed of until a future contingency.	
6.		
7.		
8.		
9.		
10.		

(a) See the Appeal, Vol. XII. page 218.

1. Resulting trust for the heir at law as to the produce of the sale of real estate, not exhausted by a trust, in which it was combined with personal. *Robinson v. Taylor.* - - - - - I. 44
2. Resulting trust for grantor in a deed, where the consideration is only five shillings. - - - - - I. 92
3. Real and personal estate devised to the executor in trust to pay debts and legacies; the rest and residue to himself; the only purpose of devising the real appearing to be to ensure payment of the debts, without any intention to disinherit the heir, it was held only a charge; and that the heir was entitled to the surplus of the real estate. *Halliday v. Hudson.* - - - - - III. 210
4. Settlement of the wife's estate to such uses as the husband and wife or the survivor should appoint by Deed or Will, with three witnesses; in default thereof, to the heirs of the husband: the wife surviving made a disposition by her Will to a charity, and therefore void; decreed to the heir of the husband. *Attorney-General v. Ward.* - - - - - III. 327
5. Devise upon a future contingency; and no intermediate disposition of the rents and profits; a resulting trust for the heir. - - - - - III. 725
6. The produce of real estate sold under a power in a Will passed by a residuary clause with the personal estate: the object being a conversion out and out: but part, remaining unsold, was held a resulting trust for the heir at law. *Brown v. Bigg.* - - - - - VII. 279
7. Conversion of real estate into personal by Will for a particular purpose, which failed: a resulting trust for the heir, against the next of kin. *Williams v. Coade.* - - - X. 500
8. Devise of a real estate to be sold. The object being a provision for legacies, not an absolute conversion to all intents, a resulting trust for the heir at law as to the surplus; which was not affected by the appointment of "Residuary Executor." *Berry v. Usher.* - - - XI. 87.
9. Testator devised a copyhold estate to his wife, upon trust to sell, and invest the money in the funds; and gave and bequeathed the interest and dividends to her use. He also gave and bequeathed to her all his effects whatsoever and wheresoever for her maintenance, upon full trust and confidence in her justice and equity that at her decease she would make a proper distribution of what effects might be left in money, goods, or otherwise, to his children; accounting what they had already received in money or effects as part of their shares. The widow, executrix, entitled to the produce of the copyhold estate for life only with a resulting trust as to the capital for the heir. The widow entitled to the absolute interest in the personal estate. *Wilson v. Major.* - - - - - XI. 205



10. Resulting trust for the heir; the only express devise being to convey to the devisor's son from and after his age of thirty; which he did not attain; and no devise by implication from a declaration, that he shall have no power over the estate until his age of thirty. *Nash v. Smith.* - - - - -

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### TRUST OF TERM.

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### UNDERTAKING to SPEED.

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### USE.

1. To convert personalty into land merged by union with the fund.
  2. Feoffment to a relation without livery construed a covenant to stand seised.
  3. Limit of springing uses.
  4. At Common Law intended in feoffee, &c. without averment; as if to feoffor, &c.
  5. Results according to estate or limitation.
  6. Trust subject to debts, to receive, &c. and educate devisor's son till twenty-one; and then to him: not executed in him until twenty-one.
- . The decisions, that, where the uses to convert personal estate into land are united with the fund in the same person, it shall be considered as land without intent declared to the contrary, have gone too far; for in that case the uses are merged; there being no person to call for the application. - - - - - I. 204
- . Feoffment by deed to a relation and his heirs, but no livery of seisin: it shall be construed a covenant to stand seised. - - - - - II. 226
- . There may be any number of springing uses within twenty-one years after lives in being. - - - - - II. 241
- . At Common Law the use was intended to be in the feoffee or conusee; and is not averred; as it must be, if to the use of the feoffor, &c. - - - - - III. 666

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- 5. Conveyance by one seised *ex parte materna*: the use results in the same manner: so, if expressly limited to him. - - - - -
- 6. Devise, charged with debts, to trustees and their heirs; in trust to receive and take the rents, issues, and profits; and thereout to support and educate the devisor's son till the age of twenty-one; and then to him. Not a use executed in the son before the age of twenty-one. -  
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USURY.

- 1. } Defined. Intention of forbearance for exorbitant in-
  - 2. } terest must appear.
  - 3. Not applicable to *Post obits*.
  - 4. Not by reasonable commission for incidental charges of remittance.
  - 5. Relief on paying what is due.
  - 6. By securing principal and interest with a chance of the rise of stock.
- 
- 1. Usury is taking more, than the law allows, upon a loan, or for forbearance of a debt. - - - - -
  - 2. To make a contract usurious intention of forbearance for exorbitant interest must appear. - - - - -
  - 3. *Post obit* bonds, though upon terms of gross inequality, established; such securities not being liable to be impeached on the ground of usury. *Wharton v. May*. -
  - 4. A reasonable commission, beyond legal interest, for incidental charges, as upon agency in the remittance of bills, not usurious. *Baynes v. Fry*. - - - - -
  - 5. Relief against usury upon the terms of paying what is due. - - - - -
  - 6. Contract for re-payment of a debt with legal interest, or at the option of the creditor to transfer so much stock as it would have produced on the day it was payable, void as usurious: the principal and interest being secured, with a chance of a rise of the stock: not therefore like a contract to re-place stock absolutely; which might fall. *Barnard v. Young*. - - - - -
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.. Valuation not regulated by *pretium affectionis*. - - XVIII. 312  
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VARIANCE.

1. Allegation, not proved, that plaintiff, the tenant, was to pay taxes, and repair, no substantial variance.

.. Allegation of the bill that the plaintiff, the tenant, was to pay taxes and do necessary repairs, not proved, is no substantial variance: being an admission against himself, and immaterial from a tenant's legal liability.  
*Gregory v. Mighell*. - - - - XVIII. 328

VENDOR AND VENDEE.

1. Purchaser of small lots entitled to attested copies of title-deeds.
2. Covenants under general agreement to sell the fee, free from incumbrance.
3. Purchaser, objecting to the title, cannot hold possession without paying in the money.
4. Vendor's lien; unless clearly relinquished; as by another security. Marshalling assets in that case.
5. Vendor's lien probably from the *Civil Law* as to goods; prevailing, beyond stoppage *in transitu*, even against actual possession.
6. Vendor's lien; having paid prematurely.
7. Lien on conveyance, or payment, by surprise.
8. { Implied discharge of purchaser by the receipt of the
9. { trustee from seeing to the application of the money;
- { which has been carried too far.
10. Sale without notice of a prior contract.
11. Vendor, defendant to bill for specific performance, restrained from conveying.
12. Purchaser not compelled to take a doubtful title.
13. Defect on the abstract, delivered before bill by purchaser, no objection.
14. Outstanding satisfied term may be an objection to the conveyance; not to title.
15. Compensation for right reserved; though no claim for many years.
16. { Purchaser bound by notice of judgment, not docketed,
17. { or deed not registered.
18. Distinction between the Statutes, denying legal effect to, and making void, instruments. Equity in the former instance on the contract.
19. Covenant not to sell water from a well to the prejudice of lessees of water-works not enforced by Injunction.

20. Purchaser not compelled to take a doubtful title.	
21. Averment of alleged seisin to a plea of purchase, &c.	
22. How far purchaser of lease bound to notice.	
23. Trade, sold with the good-will, may be set up again, if no express covenant, or fraud.	
24. Purchase under an Inclosing Act.	
25. Purchaser of coal mine, in possession and working, ordered before conveyance to pay in.	
26. Assignee in bankruptcy selling by general description, bound for the title.	
27. Whether advertising a lease in possession is the same as declaring, that the vendor cannot produce lessor's title.	
28. Counsel's approbation not a waiver of all reasonable objections.	
29. Lien after judgment against purchaser of leasehold house, &c.	
30. Dismissal on motion after Report against title.	
31. Purchaser's possession according to the contract, no ground for payment into Court on objections to the title; as alterations, &c. against the nature of the contract are.	
1. Purchaser of small lots entitled to attested copies of the title-deeds, accompanying the principal purchase, at the expense of the vendor: no stipulation having been made upon the subject. <i>Boughton v. Jewell.</i> - - -	XV. 1
2. Under a general agreement to sell a fee-simple estate, free from incumbrances, the purchaser is entitled to various covenants, according to the nature of the vendor's title. - - - - -	XV. 2
3. Purchaser, having taken possession, but objecting to the title, required either to pay in the purchase-money, or deliver up possession. <i>Clarke v. Wilson.</i> - - -	XV. 3
4. Vendor's lien for purchase-money unpaid against the vendee, volunteers, and purchasers with notice, or having equitable interests only, claiming under him; unless clearly relinquished; of which another security taken, and relied on, may be evidence, according to the circumstances; the nature of the security, &c.: the proof being upon the purchaser; and failing in part, upon the circumstances, another security being relied on, may prevail as to the residue. As to marshalling the assets of the vendee by throwing the lien upon the estate, <i>quære.</i> <i>Mackreth v. Symmons.</i> - - -	XV. 3
5. Vendor's lien probably derived from the <i>Civil</i> Law as to goods; which goes farther than the law of <i>England</i> ; by which the lien, giving the right to stop <i>in transitu</i> , is gone, where possession, actual or constructive, has been taken: the lien by the <i>Civil</i> Law prevailing even against actual possession. - - - - -	XV. 3
6. Lien of vendee, having paid prematurely, analogous to that of vendor. - - - - -	XV. 3

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| 7. Lien; where either conveyance, or payment, was by surprise. - - - - -   | XV. 353  |
| 8. Objection to title by a purchaser under a trust to sell, as bound to see to the application of the money in satisfaction of scheduled creditors and others, coming in within a limited time after the date of the deed or disabilities removed, over-ruled upon the tenour of the deed; implying, that the receipt of the trustees should be a discharge. <i>Balfour v. Welland.</i> - - - - -        | XVI. 151 |
| 9. The doctrine as to binding a purchaser to see to the application of the money by trustees has been extended farther than any sound equitable principle will warrant.  | XVI. 156 |
| 10. Whether after a contract for sale of an estate the vendor, selling to a purchaser for valuable consideration without notice, is not accountable for the money as a trustee, <i>quære. Daniels v. Davison.</i> - - - - -  | XVI. 249 |
| 11. Injunction, restraining vendor, defendant to a bill for specific performance, from conveying the legal estate. <i>Echliff v. Baldwin.</i> - - - - -  | XVI. 267 |
| 12. Purchaser not compelled to take a doubtful title. (See No. 20.) <i>Stapylton v. Scott.</i> - - - - -   | XVI. 272 |
| 13. No objection to a purchaser, that the defect of title appeared on the abstract, delivered before he filed his bill. <i>Stapylton v. Scott.</i> - - - - -   | XVI. 272 |
| 14. Outstanding term, to attend the inheritance, the trusts being performed, may be an objection to the conveyance: not to the title. <i>Berkeley v. Dann.</i> - - -   | XVI. 331 |
| 15. Reservation of salt-works, mines, &c. in 1704, with a right of entry, though no instance of any claim, and the title had been transferred in 1761, without such reservation, upon the usual covenants, held an objection, giving a right to compensation: the purchaser not insisting upon it farther. <i>Seaman v. Vawdry.</i> - - -  | XVI. 390 |
| 16. Purchaser bound by notice of a judgment, though not docketed. <i>Davis v. The Earl of Strathmore.</i> - - -  | XVI. 419 |
| 17. Purchaser within the Registry Act (7 Ann. c. 20.) bound by notice of a deed, not registered. - - - - -   | XVI. 427 |
| 18. Distinction between Acts of Parliament, denying legal effect to instruments, as the Act for enrolling Bargains and Sales, and the Registry Act, (7 Ann. c. 20.) and Acts, declaring instruments void to all intents; as the Annuity and the Ship Registry Acts. Notwithstanding the former, the party is bound in Equity by the contract. - - - - -  | XVI. 428 |
| 19. Covenant upon a conveyance in fee with the grantors, lessees of water-works, not to sell or dispose of water from a well to the injury of the proprietors of the said water-works, their heirs, executors, administrators, and assigns. Whether the covenant runs with the land, so as to bind, and be enforced by, assignees, whether it is contrary to the policy of the law, and as to the effect |          |

of a renewal of a lease, *quære*. The parties left to law, and a demurrer allowed, from the inconvenience of enforcing such a covenant by Injunction. *Collins v. Plumb.* - - - - -

XVI.

20. Purchaser not compelled to take a doubtful title: viz. by executing a power of sale, introduced under a direction by a decree, establishing a Will, to the Master to approve a proper settlement; the Will not authorizing the insertion of such a power: nor could it be sustained under a power by a former settlement; which, if not extinct by the failure of the limitations, and the union of the estate for life with the reversion, could not be duly applied to purposes, clearly foreign to the original object: and, though purchasers are not put to exercise a very nice and critical judgment with regard to the purposes, for which powers are created, it could never be intended to refer to a perfectly new set of limitations, in a new settlement, at a long subsequent period, under a disposition by the Will of the owner of the fee; to be exercised, not for any purpose in the least degree connected with the settlement, but avowedly as an expedient to supply the want of a valid power in that settlement; and enable those, whom he had made only tenants for life, to dispose of the estate. (See No. 12.) *Wheate v. Hall.* - - - - -

XVII.

21. No instance of the plea of purchase for valuable consideration without notice without an averment, that the party purchased from a person, seised, or pretending to be seised, in fee. - - - - -

XVII. 1

22. Purchaser of a lease, though not considered a purchaser for valuable consideration without notice, to the extent of not being bound to know, from whom the lessor derived his title, is not to take notice of all the circumstances, under which it is derived. Therefore understood to have notice, that the lessees were trustees for a charity; not that the lease was bad; that depending on circumstances *dehors*. - - - - -

XVII. 2

23. Sale of a trade with the good-will does not prevent the vendor's setting up again a similar trade without express covenant; or fraud, by representing it as a continuation of the old trade; or by conduct encouraging others to involve themselves, in the confidence that he would not trade again, &c. *Cruttwell v. Lye.* - - -

XVII. 3

24. Objection by a purchaser of allotments under an Inclosing Act, that the award of the Commissioners was not made, over-ruled: the Act containing a clause, enabling a sale, and declaring the conveyance valid, before the award; and, supposing the possibility of the Commissioners varying the allotments, the purchaser having full notice of all the circumstances. *Kingsley v. Young.* - - - - -

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| <p><b>25.</b> Order on a purchaser, before conveyance, to pay into Court instalments due and interest according to the contract: the subject being a coal-mine; and the purchaser in possession and working it. <i>Buck v. Lodge.</i></p> <p><b>26.</b> Implied covenant by vendor of a freehold estate for the title, though an assignee under a Commission of Bankruptcy, selling by a general description, not restrained to his actual interest (a). - - - - -</p> <p><b>27.</b> Whether the effect of advertising for sale a lease in possession is precisely the same as a declaration, that the vendor cannot produce the lessor's title, <i>quære.</i> -</p> <p><b>28.</b> Approbation of Counsel not a waiver of all reasonable objections to the title. - - - - -</p> <p><b>29.</b> After judgment against the purchaser of a leasehold house and furniture, lien of the vendor upon the house and furniture, and proof under a Commission of Bankruptcy against the purchaser for the deficiency. <i>Ex parte Lord Seaforth.</i> - - - - -</p> <p><b>30.</b> On the Report against vendor's title his bill for a specific performance dismissed, with costs, on motion. <i>Walters v. Pyman.</i> - - - - -</p> <p><b>31.</b> Possession by a purchaser according to the contract not a ground for payment of the money into Court on objections to the title: acts of alteration, or destruction against the nature of the contract are; and slighter acts, after the objections discovered, effectual for that purpose, than if done with an understanding on one side that there is a title, on the other, that there is not. <i>Dixon v. Astley.</i> - - - - -</p> | <p>XVIII. 450</p> <p>XVIII. 512</p> <p>XVIII. 512</p> <p>XVIII. 514</p> <p>XIX. 235</p> <p>XIX. 351</p> <p>XIX. 564</p> |
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See Accident 1. Contract 36. 60. (*Specific Performance* 47.) Executor 82. Legacy 26. Lien 11. 12. 14. 16. 25. Notice 10. 11. Pleading 54. Principal and Agent 15. Purchase 1.

### VENDOR'S LIEN.

See *Marshalling* 6.

### VENTRE INSPICIENDO, WRIT OF.

See *Bill to perpetuate Testimony* 2.

### VESTING.

1. Legacy to be paid at a future time.
2. Under a marriage settlement at twenty-one.
3. In all children, subject to be divested by appointment, under words of recommendation.
4. Legacy to A. for life and to her children: if she leave none, over: vested in the legatee over, though not surviving A.
5. Of stock bequeathed to be laid out in an annuity: the legatee dying two days after testator.
6. Bequest of dividends till the age of thirty-two; at which time the stock to be transferred: not vested before.

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(a) See the note, Vol. V. page 147.



7. } Though payment postponed : Distinction as to a charge
8. } on land.
9. Though subject to appointment.
10. Under trust by Will for all children when and as they shall severally attain sixteen, with maintenance : those born after one attains that age excluded. Maintenance without regard to ability.
11. Under residuary trust to pay dividends equally between two nieces until marriage and from, &c. their respective marriages to assign, &c. vested before marriage.
12. Though possession deferred.
13. Under bequest to legatees in remainder or their representatives, notwithstanding death before the legatee for life.
14. Under an inaccurate letter, the basis of a settlement.
15. Of residue not prevented by restriction as to particular interests.
16. In the survivor of two objects before the time of payment.
17. In all children under bequest to such as A. who died in testator's life, shall think most deserving, &c.
18. Vested interest not divested; the expressed contingency not having happened.
19. Of legacy on the contingency of discharge from the effects of misfortune, &c. in trade by discharge under a composition.
20. In all under general bequest to children : those born after appropriation, &c. on attaining the age for payment not allowed the by-gone interest.
21. Of portions, to be paid at twenty-one, if after the death of the parents ; with survivorship on death before the shares become payable ; and a limitation over, if none living at the death of the surviving parent ; or all die, before the fund become so payable, &c.
22. In the person answering a particular description, at a particular time, exclusively.
23. Under a Will depending on the nature of the purpose, &c.
24. Of residue only as received requires clear expression.
25. " When " in a Will conditional : but may postpone payment only, not vesting.
26. " Cum " and " si " equivalent in the *Civil Law* ; from which most of our rules as to legacies are borrowed.
27. Distinction between legacy at, and payable at, twenty-one, disapproved.
28. Not equally the effect of a direction for maintenance, as for interest.
29. Of legacy not until the time of division.
30. By construing " or " " and."
31. In all children born before the period of distribution under a general bequest.
32. From a year after testator's death under direction to lay out with all convenient speed.
33. At testator's death under a tenancy in common ; though combined with survivorship.

34. Of legacy, when twenty-one, on the intention.
35. On marriage and having a child; though limited over on death without, &c.
36. On the legal effect; though subject to a contingent charge.
37. In a child deceased, having attained the age, under a clause of survivorship.
38. By confining survivorship between two legatees to lapse.
39. Under residuary bequest over after a life to relations in next of kin at that time.
40. Under bequest to the children of A. in those born, when the first attains twenty-one.
41. Enjoyment being deferred with reference to the estate, not the legatee.
42. Though survivorship on death under twenty-one.
43. The time being only an exception; not of the substance.
44. Apparent condition being referred to the time of possession.
45. Subject to be divested.
46. Of portions at twenty-one not controlled by a condition of surviving the parents with reference to another event, that did not happen.
47. Limited by the nature of the subject and the primary object.
48. Possession only postponed.
49. Not prevented by the year allowed to executors, &c.
50. Limited to children living, when the first is entitled.
51. In an only surviving younger child; excluding one, become the eldest.
52. In legatees dying during a previous interest for life.
53. Not under "younger children" in a second, become eldest, before twenty-one, the period of survivorship.
54. Under bequest to children, exclusive of those born after the first attains twenty-one.
55. "Two years after my decease if my debts shall then be paid:" a condition precedent.
56. Not before the time of payment, if annexed to the substance.
57. Notwithstanding terms importing power and payment after death.
58. Distinction between time annexed to the legacy or the payment only.
59. Until appointment,
60. ) Survivorship on tenancy in common by Will referred
61. ) to testator's death; unless repugnant.
62. On general construction.
63. Expressed provision for survivorship excludes implication in a different event.
64. Of legacy to the children of A. equally, with survivorship on death under twenty-one, in those living at testator's death exclusively.
65. Under general bequest to children in those born, and those who died, after testator's death, and in the lives of the tenants for life.

66. In children born before the time of distribution, unless expressly provided.
  67. Not until payment under a trust by deed to accumulate until twenty-one and upon, &c. to pay to each.
  68. Limited by a power of advancement before the age of twenty-six.
  69. At twenty-one, during an interest for life ; though subject to a limitation over on death before time of payment.
  70. Notwithstanding death during a tenancy for life and survivorship.
  71. Legacy at the decease of a person entitled to the fund, out of which it is given, vested immediately.
  72. In all children ; including those born after testator's death.
  73. In express legatees notwithstanding the impossibility of providing a security directed.
  74. Not until sale under a devise at such time as the sale should be completed.
  75. Not depending on the uncertain time of payment.
1. Legacy, to be paid at a particular time, is *debitum in præsentì solvendum in futuro* ; and vested. - -
  2. By settlement on marriage, reciting an intention to provide for the wife and children, certain tolls were granted for the remainder of the grantor's term, in trust to raise an annuity for the lives of the wife and her mother and the survivor : then reciting, that the remainder of the term might expire in the life of the wife or her children, therefore to make a provision for her and her children by her then, or any future, husband the trustees should be possessed of the said tolls for the remainder of the term, upon trust to raise after the deaths of the grantor and the mother of the wife £100 annually, to be placed out in the purchase of freehold lands or hereditaments, or leasehold estates for two or three lives, as often as a competent sum should be raised for that purpose ; and, until convenient purchases should offer, to be invested in Government securities upon trust, in case the wife should survive the term, to pay the rents and profits of such estate or estates so to be purchased, or the interest, produce, and profits, to arise from the money so intended to be placed out, until such purchase should be made, to the wife for life ; and after her decease to apply the said rents and profits or interest-money towards the support and maintenance of such child and children of her, as should be living at her death, till the youngest should be twenty-one ; and then to be possessed of such estates so to be purchased, or of the money arising from the annuity not placed out in one or more purchase or purchases, to the use of such child or children, in such shares and proportions, payable at twenty-one, as the survivor of the

husband and wife should by Will or Deed direct, limit, and appoint; in default thereof to the use of all such children, equally to be divided at their respective ages of twenty-one: but if she should die without issue, leaving any child or children, or all should die under twenty-one, then to the use of the grantor, his heirs, executors, administrators, and assigns; and after paying the said annuities to be possessed of all the surplus money, arising from the said tolls during the remainder of the term, for the use of the grantor, his executors, &c. From the death of the grantor, who survived the wife's mother, the trustees received £100 a-year; and laid out in stock the sums received and the produce. One son was the only issue. He attained twenty-one in the life of his mother; and survived her. The Court would not invest the fund in land: but held it with the accumulations from the death of the grantor and the future payments a vested interest in the son at twenty-one; and as personal estate belonging to his administrator. *Swann v. Fonnereau.* - - - - -

III. 41

3. Bequest to *A.* for life, with power on her marriage to appoint the interest to her husband for life, and a recommendation to dispose of the principal part after her own death and the determination of the preceding trusts among the children of *B.* the recommendation being held an absolute trust, it is a vested interest in all the children, subject to be divested by appointment; and, there being no appointment, children born after the death of the testator, and those, who died in the life of *A.*, are entitled with the rest. *Malim v. Barker.* -

III. 150

4. Legacy to *A.* for life; and after her decease to her children; if she should leave none, to *B.* and *C.* share and share alike, or to the survivor: a vested interest in *B.* and *C.* upon the death of the testator as tenants in common; *A.* though she survived them, dying without children. *Perry v. Woods.* - - - - -

III. 204

5. Legacy of stock to *A.* to be laid out in an annuity for her life: *A.* died two days after the testator and before any alteration of the stock: her administrator is entitled to a transfer. *Barnes v. Rowley.* - - - - -

III. 305

6. Testatrix gave to *A.* the dividends of £500 stock, till he should attain the age of thirty-two; at which time she directed her executors to transfer the principal to him: the legacy does not vest till the age of thirty-two. *Batsford v. Kebbell.* - - - - -

III. 363

7. Legacy in trust for testator's mother and sister for life; and after the death of the survivor for all and every the child and children of his sister living at her death share and share alike, each receiving his or her share of the principal at twenty-one; and, if but one child should be so surviving, in trust to pay the whole to such sur-

	viving child at twenty-one: the payment only is postponed; not the vesting. <i>Wadley v. North.</i> - -	Vol. Page III. 364
8.	Charge upon land, payable at a future day, not vested till the time of payment. <i>Phipps v. Lord Mulgrave.</i> -	III. 618
9.	Remainder, subject to appointment, is vested, liable to be divested. - - - - -	III. 661
10.	Trust by Will for all the children of <i>A.</i> when and as they shall severally attain sixteen; with a direction for maintenance: those born after the eldest attained sixteen were excluded: maintenance was directed without regard to the father's ability. <i>Hoste v. Pratt.</i> - -	III. 730
11.	Residuary bequest to trustees upon trust to pay the dividends, &c. equally between the testator's two great nieces until their respective marriages, and from and immediately after their respective marriages to assign and transfer their respective moieties or shares thereof unto them respectively, held a vested interest before marriage; being taken out of the general rule, from the <i>Civil</i> law, that <i>dies incertus in testamento conditionem facit</i> . One of the legatees being dead without having been married, the Court directed one moiety to be paid to her executors: but would not permit the other moiety to be paid; but directed the interest and dividends of that moiety to be paid to the other legatee, with liberty to apply in case of her marriage or her death before marriage. <i>Booth v. Booth.</i> - - - - -	IV. 399
12.	Where an absolute property is given by Will, and a particular interest is given in the mean time, it is, not a condition precedent, but a description of the time, when possession is to be taken. - - - - -	IV. 409
13.	Bequest of the residue to <i>A.</i> for life; and after her death legacies were given to <i>B.</i> or to her proper representative, in case she should not be living at the decease of <i>A.</i> and to four other persons or their representatives or representative: one of the four died in the life of the testator; and another survived him, but died in the life of <i>A.</i> ; the former lapsed; the latter vested. <i>Corbyn v. French.</i> - - - - -	IV. 418
14.	Construction of an inaccurate letter, the basis of a settlement, as to the rights of the parties, and as to the subject, upon which the settlement was intended to attach. <i>Luders v. Anstey.</i> - - - - -	IV. 501
15.	Legacy to the testator's wife of the dividends of stock, for her life; which, he directs, shall be continued in the same stock, and then to be shared equally share and share alike to his children that shall be then living: he also gave to his wife a leasehold house (of which fifty years were unexpired) for her life and then to be let during the time of the lease to come, and the neat produce thereof to be equally placed in the stocks for the benefit of his children that shall be then living,	

equally: and as to the residue of his estate whatsoever and wheresoever the product he gave, &c. the same to be collected yearly to his wife and children equally, share and share alike, that are then living. In other dispositions the words "*then*" and "*then living*" were used with reference to some period expressed, viz. the age of twenty-one, or the death of the person to take for life. The stock and house vested at the wife's death in those children who survived her: the residue vested at the testator's death in his wife and all the children equally. *Reeves v. Brymer.* - - -

IV. 692

Bequest of the dividends of stock to *A.* for her life; and then to remain in the same stock, till each of her children attain twenty-one; and then to be paid their equal share of the same; if any die before twenty-one, to go to the survivors or survivor; and not to be under any claim or jurisdiction of their father or any husband *A.* may have. Of two children one died in the life of her mother, married, and above twenty-one. Transfer of a moiety to her administrator upon the mother's death established: the other moiety vested in the surviving daughter, an infant, so far as to entitle her to the dividends; and a reference was directed as to her father's ability. *Reeves v. Brymer.* - - -

IV. 692

Testator bequeathed a leasehold estate (after an estate for life) to his nephew *A.* and the heirs male of his body lawfully begotten, and in default of such heirs to one of the sons of his nephew *B.* as *A.* shall direct by a conveyance in his life or by his last Will. Another leasehold estate he bequeathed to *A.* upon trust, subject to certain charges, to employ the remainder of the rent to such children of *B.* as *A.* shall think most deserving, and that will make the best use of it, or to the children of his nephew *C.* if any such there are or shall be. *A.* dying in the testator's life, the bequest of the latter estate was established in favour of all the children: *quære*, as to the former. Affirmed on Rehearing and Appeal. *Brown v. Higgs.*

IV. 708. V. 495. VIII. 561

A clear vested interest not divested: the expressed contingency, upon which it was to be divested, not having happened. *Harrison v. Foreman.* - - -

V. 207

Legacy in trust for the testator's son for his own use and benefit, provided no misfortune in business shall in the mean time have happened to him, so as to deprive him or his family of the benefit of it; the testator declaring his intention, his son's fortune being amply sufficient, by this fund to form a certain and permanent provision for him or his family: but in case he fail in business at any time before the age of thirty-two, then in trust for the support of him, his wife, and children, as the trust



tees think proper, so long as he shall labour under the effects of any misfortune in trade: but as soon as he shall be freed and absolutely discharged from the effects of any misfortune or failure in trade, then (but not before) to be paid to him: otherwise the interest to be continued to be paid for the support of him, his wife, and children, for his life; and if at his death he shall be under any difficulty from misfortune or failure in business, in trust for his wife, and children, according to his appointment by Will: and, if he shall leave no widow or child, according to his disposition. There was a considerable settlement. The son, in the twenty-eighth year of his age being discharged under a deed of composition, the legacy was decreed to him; the trustees and his children not opposing it: but the Court observed, that, if he should not be discharged, as, in case it should end in bankruptcy, the trustees would not be indemnified. *De Mierre v. Turner.* - -

V. 31

20. Under a disposition by Will to the children of *A.* and *B.* testator's daughters, payable at twenty-one or marriage, with a limitation over upon failure of issue in the lives of *A.* and *B.* it was held, that all the children without restriction were entitled; and an apportionment being directed, and the interest ordered to be paid to those, who had attained twenty-one, children born afterwards, though entitled to a share of the capital, were not entitled to claim the by-gone interest. *Mills v. Norris.*

V. 33

21. Portions by a marriage settlement to be paid, transferred, or assigned, to the sons at twenty-one, to the daughters at twenty-one or marriage, if after the death of their parents; with survivorship among them, if any should die before the share or shares should become payable, assignable, or transferable, and a limitation over, if there should be no child or children living at the death of the survivor of the parents, or, being such, all should die, before the fund should become so as aforesaid payable, assignable, or transferable. Whether a child attaining twenty-one takes a vested interest in the life of the parent, *quære.* *Legh v. Haverfield.* - -

V. 45

22. A bequest to a particular description of persons at a particular time vests in persons answering the description at that time exclusively: therefore, an annuity being bequeathed over upon the death of the annuitant to the eldest child of *A.*, there being at the death no child, an after-born child is not entitled. *Godfrey v. Davis.*

VI. 4

23. Devise and bequest until a certain period from the nature of the purpose and circumstances not transmissible to representatives. *Ex parte Davies.* - - - -

VI. 14

24. A residuary bequest upon the whole Will vested only as the property was received: one of the residuary legatees, therefore, being dead, his representatives were en-



- titled only to that part, which was got in before his death. The declaration of the Decree, upon the principle, that the residuary property vested only as it was received and converted into money, going beyond the judgment at the *Rolls* (a), was reversed: The *Lord Chancellor's* judgment being, that such an intention, though, if clearly expressed, it must notwithstanding the inconvenience be executed, was not the true construction upon the whole Will; and is not to be collected, unless clearly expressed. Preliminary inquiries directed. *Gaskell v. Harman.* - - - VI. 159. XI. 489
25. The word "when," in a Will, alone and unqualified, is conditional; but it may be controlled by expressions and circumstances; so as to postpone payment or possession only, and not the vesting; as, where the interest of the legacy in the interval was directed to be laid out at the discretion of the executors for the benefit of the legatees, it vested immediately. *Hanson v. Graham.* VI. 239
26. In the *Civil Law* the words "*cum*" and "*si*" as referred to legacies, are equivalent; and from that law this rule and most of our other rules upon legacies are borrowed. VI. 243
27. Distinction between a legacy at twenty-one, and payable at twenty-one, borrowed from the *Civil Law*; but disapproved. - - - - - VI. 245
28. A direction for maintenance has not the same effect in favour of vesting as giving interest. - - - - - VI. 249
29. Legacy after limitations for life, and, in default of children, to be paid equally between two persons, or the whole to the survivor of them, held not vested till the time of division. *Daniel v. Daniel.* - - - - - VI. 297
30. Bequest to *A.*, her executors, &c. provided, that in case she shall die under twenty-one, or without leaving any husband living at her death, it shall go over, vested at twenty-one upon the intention: the word "or" being construed "and." *Weddell v. Mundy.* - - - - - VI. 341
31. A bequest for all and every the child and children of *A.*, includes every child born before the period of distribution; which, in this case, was the attainment of the age of twenty-one by the eldest, the marriage of a daughter, or the death of a child under twenty-one, leaving issue. Upon the general rule a child by a subsequent marriage was included, notwithstanding a strong implication in favour of children by the prior marriage. *Barrington v. Tristram.* - - - - - VI. 345
32. Testator directed the residue of his personal estate, subject to the payment of legacies, annuities, debts, and funeral expenses, with all convenient speed, to be laid out in real estates, to be settled in strict settlement;

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(a) See the note, Vol. XI. page 508.

and that the interest of such residue should accumulate, and be laid out in lands to be settled in like manner: various circumstances having delayed the collection and investment of the personal estate, the tenant for life was held entitled to the interest from the end of a year after the death of the testator. *Sitwell v. Bernard*.

33. Under words importing a tenancy in common, though combined with words of survivorship, the interests vested at the death of the testator; and therefore vested in one of the legatees, who died between the death of the testator and the death of the person entitled for life. *Brown v. Bigg*.

34. Legacy, when the legatee shall attain twenty-one, may be so controlled by the apparent intention as to postpone the possession only, not the vesting; as where it was to two children, when they shall attain twenty-one, to be equally divided between them share and share alike: appointing their father in trust for the same and trustees for them during their minority; and in case of the death of either the survivor to take the whole; and, in case both die in their minority, over. *Branstrom v. Wilkinson*.

35. Bequest to the testator's three children to be equally divided between them, share and share alike, but in case of the death of any without being married and having children, the share of such child so dying to be divided between the surviving children, and so if one should only survive: one being married and having a child, her share vested. *Ripley v. Waterworth*.

36. Construction of a Will; giving a vested interest, though subject to a contingent charge; and creating a tenancy in common as to part of the property, and as to the residue a joint-tenancy; there being nothing to control the legal effect of the words. Upon Appeal the decree was varied; according to the judgment of the *Lord Chancellor*, that, though by the residuary disposition to the testator's two sons and the survivor, their or his heirs, executors, &c. they took as joint-tenants the leasehold and personal estate embarked in trade, upon all the circumstances, the transactions for twelve years, as between themselves a severance was to be implied, both as to the profits and the capital. *Jackson v. Jackson*.

37. Bequest to three children in thirds respectively; with a direction that they should not be put in possession, till their respective attainments of particular ages; and in case of the death of either of the above-named children before the ages mentioned that third to be equally divided between the two surviving children; and in the event of the death of two before the respective ages above mentioned, then the whole to devolve to the sur-

viving child : but should all his children die, before they should attain their said respective ages, then the whole of his estate was given over. One died having attained the age mentioned. Afterwards another died under that age. The share of the latter a vested interest in the child, who died first, and the survivor, attaining the age specified. *Wilmot v. Wilmot.* - - - -

VIII. 10

38. Legacies to two sisters; with a direction in case of the death of each, reciprocally, to devolve to the other. That direction confined to the case of lapse by the death of either in the life of the testator; and did not prevent the vesting absolutely. *Cambridge v. Rows.* -

VIII. 12

39. Residuary bequest to the testator's daughter for life, and to her children at their ages of twenty-one; and after the decease of his daughter, and of her children under that age, to go and be distributed among his relations in a due course of administration. Great nephews and great nieces, the next of kin of the testator at the death of the daughter not leaving issue, entitled against the claim of the personal representatives of the daughter, the sole next of kin at the death of the testator, and of the representatives of nephews and nieces, who died in her life; insisting, that she was excluded by the Will. *Jones v. Colbeck.* - - - -

VIII. 38

40. Bequest to the children of *A.* vested at the age of twenty-one; therefore those born, after one has attained that age, are excluded. - - - -

VIII. 380

41. Devise to the devisor's wife for life, and from and after her decease to trustees, upon trust to sell, and, among other bequests, to lay out £500 in an annuity for the life of his son. A vested interest in the son, surviving the devisor, but dying in the life of the wife: the period of enjoyment being deferred with reference to the circumstances of the estate, not of the legatee. *Bayley v. Bishop.*

IX. 6

42. The vesting of a legacy not prevented by a provision for survivorship among the legatees in case of the death of any under the age of twenty-one. *Deane v. Test.* -

IX. 146

43. Bequest to *A.* for his second daughter, that he shall have born, for her education, till she shall attain the age of twenty-one; and after she shall attain the age of twenty-one, to her and her heirs for ever; she being christened *Z.*; and in default of such issue, over. Another bequest to *A.* till the said second daughter shall attain the age of twenty-one, and after she shall attain to the age of twenty-one, to her and her heirs for ever. Both vested in a second daughter, the third child, christened *Z.*; though she died under twenty-one; being an exception out of the generality of the bequest to her; and the time not of the substance. *Lane v. Goudge.*

IX. 325

4. Words, apparently of condition, frequently construed to designate only the time, at which the interest should take

effect in possession, upon circumstances; though, standing alone, they import condition: as, where in the mean time it is to be employed for the benefit of the legatee; or, where it is by way of exception out of the bequest.

IX. 2

45. Bequest to the testator's wife for life; and after her death to be divided between his brothers and sisters in equal shares: but in case of the death of any in the life of the wife the shares of him, &c. so dying to be divided between his, &c. children: vested, subject to be divested only by death in the life of the widow, leaving children. Therefore the representative of one, who died in her life, never having had a child, entitled. *Smither v. Willcock.* - - - - -

IX. 2

46. Trust, in case husband and wife shall at the death of the survivor leave any child or children, and such child or children attain twenty-one, to convey to such child, if but one; and if there shall be more than one child, who shall live to attain twenty-one, to convey to such children, who shall attain twenty-one, according to the appointment of the father, or the mother, surviving; in default of appointment, equally, at twenty-one, with survivorship; and if both parents die without leaving any child, &c. remainder to the father: vested in children, having attained twenty-one, who died in the life of one parent, with those, who survived both. *King v. Huke.* - - - - -

IX. 43

47. Interests in a partnership trade under articles to the widows of the partners for their respective lives, and after the decease of the widows to and to be equally divided among their respective children, not vested in children, who died in the life of the mother; on account of the nature of the subject; the primary object being to constitute a partnership, and ascertain the succession; and a provision for the family only a secondary object through that medium. *Balmain v. Shore.* - - -

IX. 50

48. Interest to children after the decease of their mother, entitled for life, vested in children, who died in the life of the mother: the commencement of the possession only, not of the interest, being postponed. - - -

IX. 50

49. The year allowed to executors and administrators only for convenience; and does not prevent vesting. - - -

X. 1

50. Bequest to the children of A. born or to be born, as many as there might be, at twenty-one or marriage, with survivorship and a limitation over upon the death of all, &c. vested in those living, when one is entitled, to the exclusion of those born afterwards. *Whitbread v. Lord St. John.* - - - - -

X. 1

51. Construction of a Will; that under a bequest to the younger children of A. an only surviving younger child was upon the whole Will entitled; and the second, having become the eldest, was excluded. *Lady Lincoln v. Pelham.* - - - - -

X. 1

# VESTING.

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52. Vested interest in legatees, who died during a previous interest for life. *Lady Lincoln v. Pelham.* - - - X. 166
53. Construction, that under a bequest to the younger children of *A.* a second son of three at the death of the testator and the tenant for life, who became the eldest before the age of twenty-one, till which it was subject to survivorship, was upon the whole Will not entitled. *Bowles v. Bowles.* - - - - - X. 177
54. Residue bequeathed to *A.* and "all the other children " hereafter to be born " of *B.* at their respective ages of twenty-one. Those born, after one attains that age, are excluded. *Gilbert v. Boorman.* - - - - - XI. 238
55. Trust by mortgage or out of rents and profits of estates in *Jamaica* to pay testator's debts, and farther to raise portions; to become due and be considered as vested " at the expiration of two years next after my decease " if my debts shall then be paid:" a condition precedent to the vesting; ascertained by inquiry, whether the debts could have been paid before the death of a daughter. *Bernard v. Montague.* - - - - - XI. 508, n.
56. A legacy, not as an independent bequest with a time for payment or distribution appointed afterwards, but the time annexed to the substance of the bequest: the interests do not vest before that period. *Sansbury v. Read.* - - - - - XII. 75
57. Bequest to the testator's wife of £60 a-year for life, " and " the sum of £300 to be disposed of as she thinks " proper to be paid after her death," and a leasehold house and furniture for life: an absolute interest in the £300, transmissible to the administrator: not a mere power of appointment. *Hixon v. Oliver.* - - - - - XIII. 108
58. Distinction between a legacy, given at a future time, and a legacy given, to be paid at a future time: the latter vested; and payment only postponed; the time being annexed, not to the legacy, but to the payment only. - - - XIII. 113
59. Estate in default of appointment vested until appointment. - - - XIII. 246
60. Bequest to the children of *A.* who should be living at the testator's decease, equally; with survivorship in case of death without leaving issue; if leaving issue, the issue to have the parent's share. The survivorship cannot be restrained to the period of the testator's death; as upon that construction the clause would be repugnant. *Shergold v. Boone.* - - - - - XIII. 370
61. General clause of survivorship in a Will upon a tenancy in common referred to the testator's death. - - - XIII. 375
62. Trust of real and personal estate by Will, to apply rents and dividends for maintenance of all and every the children of the testator's daughters (except the eldest son) share and share alike, until the youngest of his said grand-children should attain twenty-one; and in case of the death of any of his said grand-children,

before the youngest shall be twenty-one, having a child or children, such child, &c. to receive the parent's share; and when the youngest of his said grand-children living shall have attained twenty-one, one equal share of the capital, real and personal, to the use of such of his said grand-children as shall be then living, and the children of his said grand-children in case of the death of any, leaving such issue; to have the share the parent would have been entitled to, if living at the time of distribution; and to the heirs, executors, &c. of such his said grand-children and great grand-children. The division is to be among all the grand-children living, when the youngest attains twenty-one, including those born since the testator's death, and the children of those deceased; but the representatives of grand-children dead, not leaving children, are not entitled. *Hughes v. Hughes.* - - - - -

XIV. 21

63. Bequest to the child or children of the testator's two daughters in terms creating a tenancy in common, viz. equally to be divided, &c.; to be paid at twenty-one, or marriage of daughters; with survivorship upon the death of any, before his or their shares become payable: the accrued share to be equally divided, and to be payable, &c. as the original shares: the issue of any dying in the life-time of the two daughters to stand in the place of the parent; and a limitation over, in case his daughters die without issue; or, having had issue, such issue should die in the life-time of his daughters. The event of the death of a child above twenty-one not being within the survivorship expressed, his interest vested in his representative, subject to the ultimate contingent limitation. *Bayard v. Smith.* -

XIV. 47

64. Legacy to the children of *A.* to be equally divided among them, and if either of them die before twenty-one their share to go to the survivors: a vested interest in the children living at the testator's death, subject to be divested in the event pointed out: after-born children therefore excluded. *Davidson v. Dallas.* - -

XIV. 57

65. Bequest of the produce of the sale of a copyhold estate to *A.* the wife of *B.* for life; and after her death to divide the principal among the children of *B.* and *C.* equally; and of the testator's reversionary interest in Bank Stock on the death of *D.* if in his name at his decease, and if not, at *D.*'s death, equally among the same children. Vested interests in all the children; comprising those, who died, and those, who came into existence, after the death of the testator, and during the lives of the tenants for life. *Walker v. Shore.* -

XV. 12

66. In a legacy to the children of *A.* those, born before the time of distribution, are entitled to share; unless a time of distribution is expressly provided; excluding



all, born afterwards, by the necessity of a previous distribution.

67. Construction of a trust by deed of money to accumulate, until the grantor's grand-children, then living, or to be born, respectively attain twenty-one; and on attaining, &c. to pay to each, as they should respectively attain such age their respective shares; to be ascertained by the number in being as they respectively attain twenty-one, without regard to such as might afterwards be born. No interest vested until payment: the measure of distribution is the number existing at each period: those, who had received, have no farther claim upon the fund, increased by shares falling in: therefore, one dying under twenty-one, after all the others had received their shares, or died under twenty-one, that share is undisposed of by the deed; and passed by a bequest of "all effects whatsoever," following specific descriptions, of property. *Campbell v. Prescott.*
68. Bequest of £3000 on trust to apply the dividends to the maintenance of A. until twenty-one, and afterwards to pay the whole dividends to him for life; with power to the trustees before his age of twenty-six to raise and pay, not exceeding £600, towards or in order to his preferment or advancement in life or his other occasions as they should think proper. Upon a claim of the whole at the age of twenty-one, as absolute property, inquiry directed as to his circumstances; and whether they required the advancement of any and what part, before he should attain twenty-six.
69. Trust by Will, subject to an interest for life, to pay and transfer to the testator's nephew and nieces, equally at twenty-one; with survivorship, in case any should die, before his or their shares should become payable; and a limitation over, in case all should die, &c. Vested interest at the age of twenty-one, before the death of the tenant for life. *Hallifax v. Wilson.*
70. Trust to pay the dividends of stock to the testatrix's niece for life, and after her death to divide the capital among the brother and sisters of the testatrix, and in like manner to the survivors and survivor of them. The shares of those, who died in the life of the niece, passed to their representatives.
71. Legacy at the decease of a person, entitled to the fund out of which it is given, vested immediately; and payment only postponed. *Blamire v. Geldart.*
72. Legacies to all the children of the testator's sister, of £2000 each, payable at twenty-one, or marriage of daughters; and until the shares become payable, the interest, &c. thereof respectively to be paid to his sister for her separate use; a fund to be set apart for paying the legacies to his said sister's children, as they



become due; and in case she shall die, before all her sons attain twenty-one, or before all her daughters attain that age, or marry, the interest, &c. of the legacies for such sons and daughters as shall be under age, or unmarried to be applied towards their education, &c. All children, including those born after the testator's death, entitled; and an inquiry was directed, what would be a proper sum to be set apart to answer the legacies to future children. *Defflis v. Goldschmidt.* -

XIX. 1

73. The difficulty, or even impossibility, of providing a security, directed for legacies to children, is not a reason for excluding any children, to whom legacies are expressly given. - - - - -

XIX. 5

74. Devise to the testator's wife for life: and as soon after her decease or refusal to release dower as conveniently might be upon trust to sell and divide the produce between five nephews at such time as the sale should be completed, if then living: if any should die in her life, or before the sale should be completed, his share to his children; if none, to the survivors. The interests not vested till the sale. *Elwin v. Elwin.* - - - - -

VIII. 5

75. Legacies, to be paid out of money due on mortgage, "when recovered." The right to interest (at 4 per cent. the mortgage producing 5) does not depend upon the time, when the money is recovered. *Wood v. Penoyre.* - - - - -

XIII. 3

See Condition 4. Devise 32. Equitable Recovery 3. Legacy 21. 26. 35. Maintenance 23. Perpetuity 17. Portion 6. 7. Power (Appointment 5. 14. 18. 20. 29. 39. 53.) Settlement 11. Tenant in Common 3. Will 24. 55. 80. 90. 95. 104. 113. 137. 314. (Executory Devise 1.)

VICAR.

See Election of Curate and Vicar. Pleading 14.

VICE-CHANCELLOR OF THE DUTCHY COURT OF LANCASTER.

See Practice 142.

VIDELICET.

See Will 98.

VISITOR.

1. Petition to the Lord Chancellor, as Visitor of Trinity Hall, Cambridge.

1. Petition to the Lord Chancellor as Visitor of Trinity Hall, Cambridge, there being no heir of the Founder, to declare the election of a Fellow void, and to order the petitioner to be admitted: the Court of King's Bench having in a similar case declined jurisdiction, the Lord Chancellor heard the petition, and upon the construction of the statute dismissed it. *Ex parte Wrangham.*

II. 6

See Charity. Costs 18.

**VOLUNTARY AGREEMENT.**

*See Contract 1.*

**VOLUNTARY GIFT.**

*See Gift.*

**VOLUNTARY PROMISE.**

*See Consideration 4.*

**VOLUNTARY SETTLEMENT, &c.**

1. Settlement after marriage set aside by assignees under the husband's bankruptcy after his death.
2. Established; except as affected by notice and acquiescence, amounting to fraud.
3. Voluntary settlement supported by a provision for debts against future creditors.
4. } Mere declaration in writing, that he thereby assigned to his daughter, never parted with, and a declared
5. } intention to satisfy by a portion, ineffectual; not amounting to a legal transfer.
6. Executor never called on to perfect a gift, except to supply a defective execution of a power or the want of a surrender.
7. Void against creditors, good for other purposes.
8. Settlement after marriage fraudulent only against creditors at that time.
9. Though a fair family settlement, void against a subsequent purchase with notice.
10. Relations within the consideration of a settlement.
11. No lien on purchase-money under a settlement void by Stat. 27 Eliz. c. 4.
12. Articles executed against voluntary settlement.
13. Good between the parties.
14. Mere voluntary settlement not aided in equity.
15. } Distinction in jurisdiction between a voluntary contract
16. } and a trust created; though under the same instrument.
17. Voluntary settlement, though without fraud, and meritorious, void against a subsequent purchaser, with notice, by conveyance or articles.
18. Notice of the contents of voluntary settlement has no effect.
19. No equity under voluntary settlement to prevent a sale.
20. Distinction between voluntary contract and a trust created.
21. Distinguished from a Marriage Settlement or Will.
1. Settlement after marriage of stock standing in the name of the wife, the husband being insolvent, and soon after a bankrupt, set aside upon the bill of the assignees after the death of the husband: the stock did not survive: but was decreed to the assignees, subject to a provision for the widow. *Pringle v. Hodgson.* -
2. *A.* by voluntary deed assigned all the personal estate, which he was then or might at any time afterwards be pos-

essed of or entitled to, upon trust to pay the interest, &c. to himself for life, and after his decease to such persons as he should appoint by Will for their lives; and, subject thereto, to pay the principal to his next of kin, who should be living at his decease, his, her, or their executors, &c. Soon afterwards the testator by his Will gave some legacies, and gave the residue to the persons by name, who were his next of kin at the execution of the deed and at his death; upon whose bill, claiming under the deed an account of the trust-estate received by the trustees, and of the personal estate, &c. and to set aside the legacies, it was held, that the power was not executed by the Will: but, one of the plaintiffs being clearly affected with notice and acquiescence in the plan of giving the legacies instead of executing the power, the cause was ordered to stand over, with liberty to file a bill to establish the legacies: the Court inclining, in case the other plaintiff could be affected with notice, at all events to apply the interest of the personal estate during the lives of the legatees in payment of the legacies. They were afterwards paid under a compromise. *Griffin v. Nanson.* - -

IV. 3

3. A provision for debts in a voluntary settlement will support it against all future creditors. - - - -

IX. 1

4. Receipt for a subscription to a Navigation, with an indorsement, signed by the owner, declaring, that he thereby assigned to his daughter *A.* all his interest, found among the papers of his executrix: no evidence, that he ever parted with the paper; and a declared intention of satisfaction by a marriage portion. Bill for an assignment dismissed. *Antrobus v. Smith.* - -

XII. 3

5. Where a voluntary conveyance, kept by the party until his death, has prevailed against his Will, the conveyance has been complete; a transfer in law of the property. - - - -

XII. 4

6. Executor never called upon to do any act to perfect a gift *inter vivos*, except in the particular cases of supplying a defective execution of a power, and the want of a surrender of a copyhold. - - - -

XII. 4

7. Voluntary settlement, void against creditors, good for other purposes. - - - -

XII. 10

8. Settlement after marriage fraudulent only as against creditors at that time. The settlement coming out in the Answer to a bill by creditors, claiming under a devise for debts, they are entitled to an inquiry. *Williams v. Coussmaker.* - - - -

XII. 13

9. Voluntary settlement void under the Statute 27 Eliz. c. 4, against a subsequent purchaser for valuable consideration with notice, though a fair provision for a wife and children, an Injunction, restraining the husband from selling, was refused; but a demurrer by the husband

# VOLUNTARY SETTLEMENT, &c.—VOLUNTEER. 633

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- over-ruled, as covering too much: the plaintiff being entitled until a sale to an execution of the trust. *Pulvertoft v. Pulvertoft.* - - - - - XVIII. 84
10. Limitation to brothers or other relations within the consideration of the settlement; and therefore not voluntary. XVIII. 90
11. Purchase-money cannot be laid hold of in favour of claims under a previous settlement void under the Statute 27 Eliz. c. 4, as being voluntary. - - - - - XVIII. 91
12. Articles executed against a voluntary settlement. - - - XVIII. 92
13. Voluntary settlement good between the parties. - - - XVIII. 92
14. Court of Equity will not act in favour of a mere voluntary settlement; and therefore upon a subsequent purchase with notice and covenant to lay out the money to the same uses will not lay hold of the money. - - - XVIII. 93
15. Distinction upon the want of consideration. Upon a contract merely voluntary this Court will do nothing; but takes jurisdiction upon a trust actually created; unless perhaps against a party, having a right to put an end to it by his own act under a sole power of revocation; by analogy to the distinction between the cases, where an intail can be barred by Fine, and where a Recovery is necessary. (See No. 20.) - - - XVIII. 99
16. The distinction between contract and trust with reference to the want of consideration has been acted upon under the same instrument. - - - - - XVIII. 99
17. Voluntary settlement, though free from actual fraud, and meritorious, as a provision for relations, void against a subsequent purchaser for valuable consideration, with notice, whether by conveyance, or articles. Specific performance decreed in the latter case. *Buckle v. Mitchell.* - - - - - XVIII. 100
18. Notice of the contents of a voluntary settlement has no effect even in equity: therefore notice of a covenant in a voluntary settlement, that the purchase-money should be paid to trustees, to be laid out in other lands, to be settled to the same uses, held immaterial. - - - XVIII. 112
19. No equity under a voluntary settlement to prevent a sale. XVIII. 112
20. Distinction between a voluntary contract and a trust created without consideration: in the latter case the Court acts; not in the former. (See No. 15.) - - - XVIII. 149
21. Distinction between a voluntary deed, which must have its legal effect, and a marriage settlement, or Will; in which upon the contract and clear intention the legal effect is controlled. - - - - - XLX. 366

See Consideration 1. Creditor 3. Creditor and Debtor 3. 4.

Deed 1. Parent and Child 3.

## VOLUNTEER.

1. Not aided in Equity.
1. Court of Equity does not interfere for Volunteers. - I. 275
- See Contract 14. Settlement 7.

## WAGER.

See *Contract* 8.

## WAR.

See *Foreign State* 4. 5.

## WARD AND GUARDIAN.

See *Attorney and Solicitor* (*Attorney and Client* 13. 17.)  
*Contract* 83. *Guardian and Ward*.

## WARD OF COURT.

1. Contempt by marrying not cleared before a reference for a settlement. Interest of husband surviving limited.
  2. Husband committed for marrying; and bound by undertaking to settle.
  3. Commitment for marrying; and criminal prosecution directed.
  4. Marriage in fact sufficient ground of contempt.
  5. Jurisdiction on marriage in *Scotland*: both foreigners; and the property abroad.
  6. Commitment for marrying under flagrant circumstances; and the husband's interest under the settlement strictly limited.
  7. Commitment on invalid marriage: settlement, and marriage by bans directed; and husband not discharged on undertaking to execute.
  8. Commitment to close confinement for marrying.
  9. Injunction on affidavit of intended marriage with a male infant; restraining communication. Service.
  10. Husband committed, and prosecuted; and his interest under the settlement limited.
  11. Commitment for eloping, &c. Ignorance, that she was a Ward not admitted as an excuse.
  12. Contempt by abortive attempt to marry.
  13. Suit for nullity of marriage of male Ward ordered; and Injunction against intercourse, &c.
1. There must be a reference to the Master for a proper settlement, before contempt for marrying a Ward of Court can be cleared. In such case settlement of her personal property to the husband for life, then to the wife for life, then to the children according to appointment of the survivor, varied; so as to vest a moiety in the children at her death, if before his; but still subject to his appointment. *Stevens v. Savage*. - - -
  2. Husband, committed for marrying a Ward of Court, and discharged under particular circumstances on undertaking to make a settlement, was held to that; and not permitted upon her consent to receive her whole fortune, viz. a rent-charge for life. *Stackpole v. Beaumont*. - - - - -
  3. Upon the marriage of a Ward of the Court, under flagrant circumstances the clergyman and clerk were ordered to attend: the husband was committed; and

I. 1.

III. 8

the *Lord Chancellor* directed the proceedings to be laid before the *Attorney-General*; expressing his opinion, that contriving a marriage without a due publication of bans is a conspiracy at Common Law. *Priestley v. Lamb.* (See No. 6.) - - - - -

VI. 421

4. In the case of a Ward of the Court a marriage in fact is sufficient to ground the contempt. *Salles v. Savignon.*

VI. 572

5. Upon the marriage of a Ward of the Court, both parties being foreigners, and the property abroad, and the marriage in *Scotland* on the day the bill was filed, the Court took jurisdiction; but did not commit the husband; ordering him to attend from time to time, and be at liberty to make a proposal. *Salles v. Savignon.* -

VI. 572

6. Upon a marriage of a Ward of the Court, under flagrant circumstances, the husband obtaining a license upon a false oath, that she was of age, the clergyman was ordered to attend, and reprimanded: the husband was committed; and ordered to be indicted. Being convicted, and having suffered the punishment, upon his petition to be discharged on executing a settlement the *Lord Chancellor* would not approve a proposal giving him any farther interest than, in case of his surviving and no children, under her appointment: requiring the fund to be transferred to the *Accountant-General*; with a trust declared to pay the dividends to her separate use for life, from time to time, and not by way of anticipation: after her decease the capital among all her children by any marriage: if none, and he survives, according to her appointment by Will; if no appointment, to her next of kin; and, if she survives, subject to her appointment, to her, her executors, &c. No costs to the husband. *Millet v. Rowse.* (See No. 3.)

VII. 419

7. Upon the marriage of a female Ward of Court all parties concerned were ordered to attend: and the husband was committed; and restrained from receiving her visits; and she consented to quit her residence with a friend of his under an intimation from the Court, that she would otherwise be compelled to do so. The husband after some time was permitted to propose a settlement. The *Lord Chancellor* would not admit a provision for children by a subsequent marriage, by way of absolute settlement, but only by a power to the wife to charge by way of appointment to each child a share not exceeding the share of each child by the first marriage. The husband to have some part of the income independent during coverture. The wife having by the proposed settlement a power of appointment in case of no children and the husband surviving, the limitation in default of appointment was directed to be to her next of kin, exclusive of the husband. The Master finding, that the marriage was invalid, a marriage by bans was

directed. The *Lord Chancellor* refused to discharge the husband on undertaking to execute the settlement.

*Bathurst v. Murray.* - - - - - VIII. 74

8. Orders have been made for committing to close confinement for marrying a Ward of Court. - - - - - VIII. 79

9. Injunction upon affidavit of an intended marriage with a male infant, aged eighteen, restraining communication with him until farther order; and that service of the order at the house, which appeared to be the last place of abode, though apparently shut up, should be good service. *Pearce v. Crutchfield.* - - - - - XIV. 206

10. Under a settlement on marriage of a female Ward of Court the husband, committed and prosecuted, having, in consideration of receiving a certain part of her fortune, the value of which was taken by estimation, released all right and interest in the residue, was thereby deprived of all farther interest; and not permitted therefore on suggestion, that the estimation was not fair, to attend the account, directed against the executors. *Pearce v. Crutchfield.* - - - - - XVI. 48

11. Commitment for eloping with a Ward of the Court; and against another person for assisting: ignorance, that she was a Ward of Court, not admitted as an excuse. *Nicholson v. Squire.* - - - - - XVI. 239

12. Abortive endeavour to marry a Ward of the Court a contempt. *Warter v. Yorke.* - - - - - XIX. 451

13. Parties, concerned in the marriage of a male infant Ward of the Court, attending by Order, the clergyman appearing exculpated, was discharged, with costs out of pocket from the infant's estate. The others ordered to attend the Master on an inquiry, whether the marriage, by false names, was valid; and upon the Report a suit for nullity of marriage at the expense of the infant's estate was ordered: and all the parties were restrained by Injunction from all intercourse, personal, by correspondence, or otherwise, with the infant. *Warter v. Yorke.* - - - - - XIX. 451

See *Baron and Feme. Parent and Child. Practice* 183.

WARRANTY.

1. Against obvious defect not binding.

1. Warranty upon a sale against an obvious defect not binding. - - - - - X. 507

WASTE.

1. By tenant for life, felling timber, instead of mortgaging under a power, for the expense of inclosure.

2. By tenant for life, with the reversion in fee, before the birth of an intermediate tenant in tail: the produce after the death of tenant for life laid out in land, and settled to the same uses.



3. In trees planted for ornament.
  4. Power of tenant for life without impeachment, &c. not enlarged by implication.
  5. Distinction between tenant for life, and trustees, without impeachment, &c.
  6. By ploughing pasture under covenant for husbandlike management.
  7. In trees planted, &c. for ornament: exception of husband like management.
  8. Right of tenant for life; particularly as to ornamental timber.
  9. In trees planted, &c. for ornament or shelter: extended to rides or avenues through a wood; but not to the whole wood.
  10. Legal right of tenant for life without impeachment, &c.
  11. Writ at Common Law after action to restrain waste.
  12. Account on the injunction.
  13. Injunction, where there is an executory devise over, even of a legal estate: more especially of a trust.
  14. By tenant for life, destroying that estate, and bringing forward a remainder, to be prevented by the trustees.
  15. Injunction against trespasser, cutting by collusion with tenant.
  16. Writ at Common Law.
  17. Information of intention without acts or threats not sufficient.
  18. Distinguished from trespass or destruction. Injunction in those cases.
  19. Writ of *estrepement*.
  20. As to right of tenant in tail after possibility, &c.
  21. { Property of tenant for life without impeachment, &c.
  22. { and tenant in tail after possibility, &c. in the trees severed.
  23. Tenant in tail after possibility, &c. not restrained except for malicious waste.
  24. Injunction not prevented by appearance the day before the motion.
  25. Enjoined between tenants in common; one occupying under the other: otherwise destruction only.
  26. Equitable: trees planted for ornament.
  27. Injunction against tenant for life without impeachment, &c. of an estate, purchased under a trust.
  28. Equitable not extended to trees merely ornamental.
  29. Not cutting necessary for growth of underwood.
  30. Under a trust of the rents and profits.
  31. Right of tenant for life without impeachment, &c.
  32. Equitable waste not to be extended.
  33. Equitable extended to trees planted to exclude objects.
  34. Inquiry, whether for the benefit of all parties interested to fell timber notwithstanding a clause of forfeiture by cutting.
1. Tenant for life punishable for waste, with power under an Inclosing Act to mortgage for the expense of the in-

- closure, felled timber, and applied the produce instead: decreed to account to owner of next estate of inheritance. *Lee v. Alston.* - - - - - I. 78
2. *A.* tenant for life; remainder to his sons successively in tail male; remainder to *B.* for life and to her sons in the same manner, with trustees to preserve contingent remainders: *A.* being also seised of the reversion in fee cut and sold timber before the birth of a tenant in tail: afterwards *B.* had a son; who died soon after his birth; and another son, who survived *A.* The produce of the timber was decreed to be laid out in the funds during the life of *A.* and upon his death without having had a son was decreed to be laid out in land, to be settled to the uses of the estate, upon which the timber was cut. *Powlett v. The Duchess of Bolton.* - - - III. 374
3. Injunction, restraining tenant for life, without impeachment of waste from cutting timber growing for ornament or shelter, extended to clumps of firs on a common, two miles from the house, having been planted for ornament. (See Nos. 7. 8. 9. 26. 28.) *Marquis of Downshire v. Lady Sandys.* - - - - - VI 107
4. The power of tenant for life under the general words "without impeachment of waste" not enlarged by implication from more extensive powers given to trustees for special purposes after her death. *Marquis of Downshire v. Lady Sandys.* - - - - - VI 107
5. Difference between the powers of tenant for life without impeachment of waste and trustees under the same words; the latter are bound to a provident execution of their powers. - - - - - VI 115
6. Injunction against ploughing up pasture upon a covenant to manage in a husband-like manner. *Drury v. Molins.* VI. 328
7. Injunction to restrain tenant for life without impeachment of waste from cutting timber or other trees planted or growing for shelter or ornament, (See Nos. 3. 8. 9. 26. 28.) and from cutting, except in a husband-like manner. *Lord Tamworth v. Lord Ferrers.* - - - - - VI. 419
8. Injunction against waste in favour of tenant for life, particularly as to ornamental timber; not so much upon his interest as his enjoyment. (See Nos. 3. 7. 9. 26. 28.) - - - - - VI. 787
9. Tenant for life without impeachment of waste restrained by Injunction from cutting timber planted or left standing for ornament or shelter, by an absolute owner of the estate, whether ornamental or the reverse: the protection extended beyond the mansion-house to rides or avenues through a wood, at a considerable distance; but not to the whole wood, to prevent cutting other parts for repairs and sale. Security to reimburse the tenant for life, if wrongfully restrained, to be ascertained by the Master; and Issues directed, whether the

timber, or any part, was planted, or left standing, for ornament or shelter by any former owner; of what estate and interest to be indorsed on the *Postea*; and whether consistently with such purpose any and what part may be cut for repairs or sale. (See Nos. 3. 7. 8. 26. 28.)

*Wombwell v. Belasyse.* - - - - - VI. 110 c, note.

10. Legal right of tenant for life without impeachment of waste to cut timber, and apply the produce to his own use. *Wombwell v. Belasyse.* - - - - - VI. 110 a, note.
11. Writ at common law after action to restrain waste. (See Nos. 16. 19.) - - - - - VIII. 90
12. In waste the account goes upon the Injunction. - - - IX. 346
13. Where there is an executory devise over, even of a legal estate, this Court will not permit timber to be cut: more especially in the case of a trust estate. - - - X. 278
14. Trustees to preserve contingent remainders not to permit tenant for life or years by the destruction of that estate to bring forward a remainder to himself or another, for the purpose of cutting timber. - - - X. 278
15. Injunction against a trespasser, cutting timber by collusion with the tenant; without prejudice to the case of mere trespass. *Courthope v. Mapplesden.* - - - X. 290
16. Writ of waste at Common Law. (See Nos. 11. 19.) - - - X. 291
17. In the case of waste it is not sufficient to swear to information of the intention. The affidavit must go either to an act or threats. *Hannay v. M'Intire.* - - - XI. 54
18. Injunction against cutting timber in the case of trespass: viz. by a person, having got possession under articles to purchase. Distinction between waste and trespass or destruction; where there is no privity. *Crockford v. Alexander.* - - - - - XV. 138
19. Writ of *estrepement* to prevent repetition of waste. (See Nos. 11. 16.) - - - - - XV. 139
20. Settlement, on marriage, of lands of the husband to the use of the husband for life without impeachment of waste: remainder to trustees to preserve contingent remainders: remainder to the wife for life for her jointure and in bar of dower: remainder to the first and other sons of the marriage in tail male: remainder to the daughters in the same manner: remainder to the heirs of the body of the husband and wife. The husband being dead without issue, as to the right of the widow to cut timber, and, which would be a consequence, to the property in it, when severed, as tenant in tail after possibility of issue extinct, either in possession, by the effect of merger, if the estates can unite, or, if not, in remainder, *quære*. A case directed. *Williams v. Williams (a).* - - - - - XV. 419

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(a) See the note, Vol. XV. page 433.

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21. Tenant for life without impeachment of waste, being dispunishable, has also the property in the trees severed. - - - - -	XV. 425
22. Tenant in tail after possibility of issue extinct, being dispunishable for waste by the law, has equally with tenant for life without impeachment of waste by settlement an interest and property in the timber. - - - - -	XV. 427
23. Tenant in tail after possibility of issue extinct, having been once tenant in tail in possession with the other donee, and therefore dispunishable for waste, may, not only commit waste, but also convert to her own use the property wasted. Therefore not to be restrained in Equity, except for malicious waste. - - - - -	XV. 430
24. Injunction against waste not prevented by appearance the day before the Motion. <i>Allard v. Jones.</i> - - - - -	XV. 605
25. Injunction against waste between tenants in common on the ground, that one was occupying tenant to the other: otherwise not, except as to destruction. <i>Twort v. Twort.</i> - - - - -	XVI. 128
26. Equitable waste by cutting trees planted for ornament. (See Nos. 3. 7. 8. 9. 28.) - - - - -	XVI. 132
27. Residue bequeathed in trust to be laid out in real estates, to be settled to the same uses as estates devised to the trustees for life successively without impeachment of waste, with various limitations in strict settlement, all the estates for life being without impeachment of waste, and the ultimate remainder in fee. The trustees having laid out part of the fund in an estate with a considerable quantity of timber upon it, taking that to be a sound exercise of discretion, the first tenant for life cannot cut the whole. As to the consequence, whether, if the trustees are not by their character prevented from taking any benefit, the tenant for life may have any and what proportion of the timber, and how the excess is to be disposed of, <i>quære.</i> <i>Burges v. Lamb.</i> - - -	XVI. 174
28. Equitable waste has not been extended beyond trees planted or growing for ornament, as in avenues or vistas, to timber merely ornamental: viz. an extensive wood. (See Nos. 3. 7. 8. 9. 26.) <i>Burges v. Lamb.</i> -	XVI. 174
29. Cutting timber, where necessary for the growth of under-wood, not waste. - - - - -	XVI. 179
30. Land devised to be sold, the money to be laid out in other estates, to be settled: the rents and profits until sale to go to the persons, entitled to the estates to be purchased. Tenant for life without impeachment of waste cannot cut timber on the estate to be sold. -	XVI. 180
31. Right of tenant for life without impeachment of waste to cut timber, generally, in a husbandlike manner, independent of the effect upon the beauty of the place, except equitable waste. - - - - -	XVI. 185
32. Equitable waste not to be extended. - - - - -	XVI. 185

33. Injunction against cutting ornamental timber, upon the principle of equitable waste, extended to trees, planted for the purpose of excluding objects from view. *Day v. Merry.* - - - - - XVI. 375
34. Devise in strict settlement, with a clause of forfeiture by cutting any trees. Upon a bill by the infant remainderman in tail an Inquiry was directed, whether any trees, in the park, not ornamental, or affording shelter to the mansion-house, are proper to be felled; and whether it would be for the benefit of all parties interested, that they should be felled, and sold: and the money laid out in other estates, to be settled to the same uses. *Delapole v. Delapole.* - - - - - XVII. 150

See Appeal 20. Bank of England 4. Bankrupt (Mortgage 4.) Charity (Jurisdiction 1.) Copyhold. Estate (For Life 3.) Heir 4. Injunction 5. 7. 8. 12. 14. 15. 19. 22. 25. 42. 47. 56. Landlord and Tenant 48. Lunacy 5. Practice 15. 46. 375. 379. Timber. Trespass 3.

## WATER.

See Injunction 62.

## WAVER.

1. Of condition for security by taking part, and payment on account.
  - 2 Of inquiry for his own benefit.
1. As to the effect of taking away part of the property sold, and a payment on account, as waving a breach of the condition of sale, requiring security, *quære.* *Ex parte Gwynne.* - - - - - XII. 379
2. Party may wave an inquiry, directed for his benefit. - XIX. 594

See Contract (Specific Performance 55.) Practice 387. Vendor and Vendee 28.

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See Presumption 11.

## WEAK MIND.

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## WEST INDIA ESTATE.

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## WEST INDIA INTEREST.

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1. Jurisdiction on contract as to *West India* estate.
  2. Expense of remitting a debt, contracted in *Jamaica*, payable in *London*, falls on the debtor.
  3. Whether Action lies on bond, on which judgment obtained in *Jamaica*.
- 
1. Jurisdiction here upon contracts as to an estate in the *West Indies*. *Jackson v. Petrie*. - - - X.
  2. Debt, contracted in *Jamaica*, made payable in *London*. The expense of commission to the agent, remitting the money, falls upon the debtor. *Cash v. Kennion*. - XI.
  3. Whether Action lies upon a bond, on which judgment has been obtained in *Jamaica*, *quære*. - - - XI.
- See *Consignment* 2. *Costs* 14. *Lien* 19. *Limitation*.  
(*Time* 14.) *Mortgage* 19. *Will* 178.

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## WILL.

1. To heir void ; except as a revocation.
2. Contingent legacy.
3. Limitation over of personal estate after a general failure of issue established : as on a contingency with a double aspect.
4. } Personal property, to be laid out in land, under a ge-
5. } neral devise.
6. Possibility devisable.
7. Equitable interest devisable.
8. Cannot pass land, which testator had not at the time of making it.
9. Passes lands under contract before, executed after, the Will.
10. Equitable lien devisable.
11. Ambulatory distinguished from specific bequest.
12. Express disposition not controlled by subsequent inference.
13. Same effect to every part.
14. Absolute interest reduced to a trust.
15. Immediate interest under power of disposition at death.
16. Substituted legacies charged under a charge of original legacies revoked.
17. General construction.

18. Of personal estate on general failure of issue void.
19. Annuitant of £50 to be purchased, and £40 till the purchase, entitled to £50 after the first year. Executor not charged with over-payment of £50 from the estate, instead of purchasing, in a general account with just allowances.
20. Restraint of alienation by executor.
21. Appointment of the whole to a surviving child established: an interest vesting at twenty-one being limited to default of appointment.
22. General construction.
23. General construction: Equitable estate for life; as an exception from a general devise. Trustees' allowances.
24. Legacy, given over on death before legatee might have received it, vested.
25. Uncertain time of sale referred to the death.
26. Future disposition referred to; but not made.
27. For grand-children restrained to those living at testator's death.
28. Codicil part of the Will.
29. Of land on trusts to be appointed by Deed.
30. Of land in trust for debts and legacies.
31. Proof of deed testamentary.
32. }
33. { Equitable assets.
34. }
35. }
36. Intent inferred from unnecessary words.
37. }
38. { Double legacies.
39. Legacies not adeemed by a second instrument, not relating to the first.
40. Trust under a legacy only to erect a charity.
41. Not construed by subsequent circumstances.
42. Codicil part of the Will.
43. } Of land for charity void; and not supported as a per-
44. } sonal benefit, unless totally separate.
45. General construction.
46. Implication.
47. General construction.
48. Conversion of property.
49. Deed testamentary.
50. ) Testamentary paper as if incorporated; and whatever
51. ) the form.
52. Rent out of freehold within the Statute of Frauds.
53. Cannot unite with a Deed.
54. Land charged with legacies in aid of the personal estate, liable under an unattested Codicil.
55. Tenancy in common, notwithstanding words of survivorship.
56. Equitable assets.
57. }
58. } Clear intent required for an equitable charge.



- 59. } Trust from recommendation, &c.
- 60. }
- 61. Principal on mortgage did not pass by the description of arrears.
- 62. Distinguished from devise : an appointment in nature of a conveyance, fluctuating till death.
- 63. General construction.
- 64. Conversion of estate.
- 65. } Additional, or substituted, legacy out of the same fund,
- 66. } and subject to the same conditions, as the original.
- 67. Advowson in gross passing by general words.
- 68. To the use of *A.* and in case of her decease to her children, share and share alike : a life interest, with remainder.
- 69. General construction. Purchaser not compelled to take a doubtful title.
- 70. General construction. Vesting.
- 71. Absolute interest in personalty under a limitation with freehold estate in tail.
- 72. Wrong description of legatee named.
- 73. Execution of power. Evidence.
- 74. Conversion of estate. Vesting. Execution of power.
- 75. Legacy of a bill of exchange, the principal property, not adeemed by payment.
- 76. Real estate, well charged, not discharged by Codicil unattested.
- 77. General construction.
- 78. Under a general charge, legacies charged or revoked by unattested instrument.
- 79. Posthumous child included among children.
- 80. Vesting restrained to children living at the death of their mother, tenant for life.
- 81. Legacy to grand-children to be assigned at twenty-one : payable, when the first attains that age.
- 82. Power : not trust.
- 83. General construction.
- 84. Contingent legacy.
- 85. Mistaken description. Election.
- 86. Time for payment of legacy after a contingent event not affected by revocation for the purpose of adding another eventual period, which elapsed first.
- 87. Condition not extended beyond the expression.
- 88. Effect given to all the Will.
- 89. Codicil part of the Will.
- 90. General construction. Vesting.
- 91. General construction.
- 92. General charge not annulled by power to sell part : but that applied first.
- 93. Of personal estate : Whether absolute or for life ; general or specific, and exempt from debts.
- 94. After charge on real estate in aid personal exempted by unattested Codicil.
- 95. General construction.
- 96. Copyhold not surrendered, as recited, did not pass.
- 97. Election.

98. *Videlicet* rejected, if repugnant.
99. Specific articles under general words.
100. "I return his bond," no release; but a legacy.
101. Residue to relations in the proportion he had given the other part of his fortune limited to pecuniary legatees.
102. "Relations" exclusive of connection by marriage.
103. Implication controlling description.
104. Vesting postponed; and cross-remainder implied.
105. Contingent estate on first taker's death under twenty-one, revoked by the extension of the time of his taking to twenty-five.
106. Specific articles under general words.
107. Words not rejected, unless repugnant.
108. Legatee under a charge in aid changed by unattested Codicil.
109. General construction.
110. Mortgage held not to pass under general residuary devise.
111. Beneficial legacy distinguished from trust.
112. "Unmarried" construed never married: "and" "or."
113. Survivorship on tenancy in common.
114. Conversion of estate.
115. Power not executed by general words.
116. Fee under "to such uses as *A.* shall appoint."
117. Exoneration of personal estate.
118. "Legal representatives," next of kin at the time of distribution.
119. Purchaser decreed to take a title under an obscure power to sell.
120. Resulting trust on failure of executory devise.
121. Implication.
122. General construction.
123. Construction. Option to leave money at interest, or lay it out in real estate.
124. } Implication.
125. }
126. Of personal estate after contingent limitation in tail; which did not take effect.
127. Limited use of articles consumed by use.
128. A note assets, notwithstanding declarations to the executor, that he never meant to call for payment.
129. Undertaking, if the Will is not changed, binding.
130. Implication.
131. General words restrained.
132. Personal estate not exonerated by a specific disposition, subject to annuities, &c.
133. Annuities of equal amount in the same Will to the same person not accumulative.
134. Absolute interest in money, to be invested in land, to be intailed.
135. Legal estate in mortgaged premises under general devise. Conveyance under Stat. Anne, c. 19.
136. Mutual Wills.
137. Bequest to *A.* and in case of her death to *B.* absolute.

138. Exception out of residuary bequest.
139. Commission of Review.
140. Unfinished paper.
141. By instructions to an attorney.
142. With clause of attestation, but no witnesses, established as to personal property.
143. Commission of Review.
144. Intention, if clear and legal, to govern; without regard to its merit or grammatical construction.
145. Implication from the purpose; as for creditors.
146. Rule in case of a double construction.
147. Qualification, &c. of general words on slight circumstances.
148. Intention executed *cy pres*.
149. "Heir male" words of purchase.
150. Not affected by unmeritorious object.
151. General rule of construction.
152. No ground for control from the object, or amount of the property.
153. Exception out of the absolute property.
154. Clear intent necessary to prevent lapse.
155. Grand-children included under "children."
156. "For the improvement of the city of *Bath*," limited to an Act of Parliament.
157. Navigation share, and money on real securities, within Statute 9 Geo. 2. c. 36. Debts and other charges apportioned.
158. Tenancy in common notwithstanding words of survivorship.
159. Testamentary indorsement on a note.
160. Favour, &c. no ground of construction.
161. No distinction between voluntary and compulsory payment on bequest of a debt, as to ademption.
162. General construction.
163. Codicil part of the Will.
164. Ambulatory.
165. "Next of kin or heir at law" construed with reference to the Statute of Distribution.
166. Legacy of a sum "in the 5 *per cent*. Consolidated Bank Annuities:" Navy Annuities decreed to be purchased: evidence rejected.
167. Evidence on blank for the name of baptism.
168. Grand-children under "children;" if no other construction.
169. General rule of construction.
170. General residuary clause passes what is lapsed.
171. Stock included under "securities."
172. General construction.
173. Of leasehold house to a charity passes under residuary clause.
174. "Right heirs" confined to a sister and nephew notwithstanding an express provision for the former.
175. Devisee, not the heir, has the benefit of a charge of legacies, that fail.
176. Commission of Review.

177. To children generally after a life estate vested in all.
178. Residuary of real and personal estate in *Jamaica* specific.
179. General words not an execution of a power, not referred to.
180. For husband an execution of a power to appoint for the benefit of a married woman and her family: but not generally.
181. Legacy general notwithstanding an appropriation.
182. Legacy in *Jamaica* currency decreed with *Jamaica* interest from testator's death.
183. Vested interest, subject to be divested on contingency expressed.
184. Rule of construction.
185. Construction of testamentary papers; some revoking others.
186. Expediency of applying the Statute of Frauds to Wills of personal estate.
187. Lands, held under old mortgages, passed by general devise: though no release of the equity of redemption.
188. Difference between debts and legacies in an implied charge.
189. }
190. }
191. } Double legacies and jointures.
192. }
193. }
194. Legacy to such persons "as shall be my heir or heirs  
"at law."
195. The legal sense *prima facie*.
196. Legacies specific on clear words.
197. General personal estate first applicable to the costs.
198. Legacy for maintenance and an apprentice-fee: the legatee at nineteen not having been put out, absolute.
199. Legacy for an infant, if it cannot be applied in the way directed, may in another way.
200. General construction as to survivorship.
201. Leasehold houses passed with the personal estate; not with the land; both given by very general words.
202. Effect of general residuary clause.
203. Distinction between a personal legacy and a real estate, as to postponing payment preventing vesting. Exceptions.
204. "Equally to be divided," &c.: they take in common.
205. Construction of direction as to possession as not operating a revocation.
206. Condition limited to the time of payment.
207. "Relations by blood or marriage" confined to the Statute of Distributions and husbands and wives.
208. Illegitimate child not entitled under "children."
209. Leasehold passing with freehold by implication.
210. Contingent legacy failing; and no necessary implication.
211. Commission of Review.

- 212. Legacy for a purpose, which did not take effect, "or  
"for any other purpose she should think proper,"  
absolute.
- 213. Survivorship, if either legatee should die, does not  
prevent vesting.
- 214. Construction.
- 215. "All I am possessed of" generally relates to the time  
of death.
- 216. General rule of construction.
- 217. } Illegitimate children may take by necessary implica-  
218. } tion: not by the mere description "children."
- 219. Rules of construction.
- 220. General words controlled.
- 221. Effect of recital by testamentary paper of bequest not  
appearing in the previous Will.
- 222. Bequeathing a debt due on a particular day.
- 223. Legacies out of real estate by an unattested paper fail;  
unless clearly referred to by Will duly executed;  
so as to be incorporated.
- 224. Contingent codicil.
- 225. Probate not conclusive.
- 226. Contingent.
- 227. Not altered, or added to without necessity.
- 228. No intendment against the plain and usual sense;  
unless plainly not intended to have that operation.
- 229. Construction not affected, because the event was not  
contemplated.
- 230. Not according to the Statute of Frauds has no opera-  
tion even for election.
- 231. Devise, even general residuary, specific. Distinction  
of personal property.
- 232. "And" construed "or."
- 233. Not construed by the amount, or the number of objects:  
except a specific disposition.
- 234. Of stock "as aforesaid," referred to the description of  
the stock, not the time of transfer.
- 235. Residuary clause passes what is lapsed.
- 236. Evidence of intent not admissible.
- 237. Positive bequest not controlled by inference.
- 238. To A. for her and her children's use: transfer decreed  
to A.
- 239. Obvious meaning not rejected on suspicion.
- 240. Clear devise not divested by doubtful implication.
- 241. Not according to the Statute of Frauds passes real  
estate in *Bermuda*.
- 242. Charge on a mixed fund remains as to the real; though  
a different disposition by Codicil failed as to that for  
want of due execution.
- 243. Real estate, charged by devise, liable to subsequent  
debts, and legacies by an unattested instrument, even  
to witnesses to the Will.
- 244. Real and personal pass under "estate."
- 245. To A.'s and B.'s families; children entitled, exclusive  
of the parents, *per capita*.

- 246. Bequest not extended by general words.
- 247. To lay out in Government or other Securities in an annuity for life. Held annuity strictly; not dividends.
- 248. "To two or their children" substitution.
- 249. Incomplete, notwithstanding the usual declaration at the beginning.
- 250. Original disposition not affected by a direction for maintenance out of dividends beyond that object.
- 251. To a sister for life; desiring her to bequeath to her own family, if they behave well to her: a trust for her next of kin, though her Will declared she meant no disposition.
- 252. { "Relations" confined by the Court to next of kin according to the Statute: though under a power of selection it may be exceeded.
- 253. {
- 254. Recommendation imperative.
- 255. Perpetual annuity, limited only with reference to the temporary funds: with absolute power of disposition, and survivorship; rejecting repugnant words.
- 256. Proof to obtain payment to the representative.
- 257. "To be laid out in a particular parish:" whether it can be laid out elsewhere.
- 258. Primary intention not defeated by failure of the particular mode.
- 259. Of personal estate by a boy at fourteen.
- 260. Issue, *Devisavit vel non*.
- 261. Supported on the intent against strict grammatical rule.
- 262. General residuary bequest from "what remains" after bequest of a specific fund.
- 263. Specific description of debts extended from another clause.
- 264. "For all the residue of testator's term and interest" passed a lease, subsequent to his death, since the expiration of the term; after which he held by the year.
- 265. Of lease or the premises held on lease does not pass a renewed lease.
- 266. Rule of construction.
- 267. Of all leaseholds does not pass renewed lease.
- 268. Right of pre-emption: the price, if not fixed, ascertained by the Master: but the intent of heir or devisee to accept must appear.
- 269. Rule of construction.
- 270. General construction.
- 271. {
- 272. { Effect and restraint of general words.
- 273. {
- 274. {
- 275. Obscure construed.
- 276. Tenant for life entitled to accumulation of rents by the description of the person first coming to actual possession.
- 277. Receiver refused on mere controversy in the Spiritual Court, without a special case.

- 278. "Effects" restrained to articles *ejusdem generis*; though the consequence was a residue undisposed of.
- 279. Absolute legacy; though in terms importing annuity.
- 280. Not construed with reference to a settlement; differing; though substitution intended.
- 281. Repugnancy distinguished from qualification.
- 282. General construction.
- 283. Evidence *dehors* as to property; not intention.
- 284. Fourth trial refused.
- 285. No jurisdiction in Equity to declare, what is, or not, a Will.
- 286. Impeached by heir.
- 287. Presumption from cancellation of a duplicate under different circumstances.
- 288. Failing as to one estate, established as to another; though expressly to go together.
- 289. Restrained to a life interest from a direction for an inventory, &c.
- 290. Residuary disposition to legatees by Will held exclusive of Codicil.
- 291. General construction.
- 292. Construction of residuary clause. For charity void as to real estate, or personal connected with land. Charges apportioned.
- 293. Legacy, with power to executors to reduce it to an interest for life, remainder over; one dead, the others renouncing, absolute.
- 294. General construction: estate for life.
- 295. If ascertained, not affected by supposed cases: but absurdity, &c. attended to to ascertain the meaning.
- 296. Of lease, or the premises held on lease, does not pass a renewed lease.
- 297. Giving a sum of stock recited, or so much as should be standing at her death, limited to the sum mentioned.
- 298. Restraint of general words prevented by the express exception of money.
- 299. Construction of general words.
- 300. "Effects" equivalent to "property."
- 301. Express not controlled by the reason assigned.
- 302. To A. in case she should have children; on failure of which over: one child, dying in her life, absolute.
- 303. "Not *specifically* disposed of" construed "not *particularly*."
- 304. Substitution of testator's daughter as a legatee by the description of heir under his Will.
- 305. "Estate" importing absolute property.
- 306. Implication prevented by expression.
- 307. Term for ninety-nine years restrained to a life by implication.
- 308. The latter limitation, if inconsistent, prevails.
- 309. Not construed *dehors*, where no latent ambiguity.
- 310. Construction against the common meaning.
- 311. More scope to the intent than in deeds.
- 312. Distinction on competence, as to testator's declarations, though conformable to what he has done.



313. Rules for construction.
314. Of two repugnant intentions the most convenient executed.
315. Inapplicable words omitted.
316. Every part contemporary.
317. Words transposed only to make sense, or give some effect.
318. The natural construction adopted, unless impossible, or incapable of effect.
319. Words not rejected, unless a rational construction impossible.
320. Effected, if a meaning can be found.
321. General construction.
1. Will to an heir at law void: but if executed according to the Statute of Frauds, it is a good revocation of a former Will. - - - - - I. 17
  2. Legacy payable at twenty-one, with proviso to go over, if legatee should at any time become seised of the real estate, to which he was entitled in remainder after an estate tail limited upon an estate for life subsisting, when he became twenty-one: even supposing there is a contingency left, he must have the legacy at twenty-one: but it may be disputed afterwards upon the happening of the contingency. *Griffiths v. Smith.* - - - I. 97
  3. Testator gave a legacy to his son, an estate in fee to a nephew, then several parts of his freehold estate, and a future purchase of freehold, to be made with part of his personal property, and all his leasehold, to his wife for life, then to his son and his issue lawfully begotten, or to be begotten, to be divided among them, as he should think fit; if he die without issue, all, as well "present" freehold and leasehold, as the estates to be purchased, to be sold; the produce to go over: no part of his "present" freehold and leasehold, or the estates to be purchased, to be sold during the lives of his wife and son: all the rest, residue, and remainder of his property and effects whatsoever and wheresoever, after paying debts, &c. to the wife. The son is tenant for life; and the devise over is good; but estates not mentioned do not pass by it. *Hockley v. Mawbey.* - - I. 143
  4. Personal estate, to be laid out in land, but lent on mortgage instead, considered as land, having been always out in trustees, and the uses never united with the possession; and passed by such general words in a Will as would pass land; as "all my estate, &c. whatsoever" and wheresoever." *Rashleigh v. Master.* - - I. 201
  5. "All my estates in law and equity" in a Will pass personal to be laid out in land. - - - - - I. 204
  6. A possibility is devisable (a). - - - - - I. 254

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(a) If coupled with an interest, see 3 Term Reports, B. R. pages 93, 96.

7. Any equitable interest is devisable. - - - - - I. 254
8. Testator cannot by any words devise lands under the Statute or at Common Law, which he had not at the time of making the Will. - - - - - I. 255
9. In cases of contracts for land before, but executed after, making a Will of land the subsequent execution is not a revocation: the legal interest, coming *in esse* afterwards, would not pass by the Will at law; but in equity is bound by the prior devise of the equitable interest. - I. 255
10. An equitable lien is an equitable obligation to do according to conscience; and a devise of it good in equity. - I. 255
11. Will is ambulatory: but a specific bequest is fixed as much as a devise of land. - - - - - I. 260
12. An express immediate disposition in a Will not controlled by subsequent inference. - - - - - I. 269
13. Some effect must be given to every part. - - - - - I. 270
14. Absolute interest to one with any expression, that he shall dispose of the whole or part to *A.*, not properly a devise, but a trust for *A.*; which the Court will execute after death of the devisee. - - - - - I. 271
15. Devise to one for life or absolutely with directions, that he shall dispose of it to another at his death, operates as an immediate devise without any such disposition. - I. 271
16. Testator declaring, his debts should come out of the real estate, not the personal, gave the real to trustees, charged with some charitable legacies, and one to each trustee. By Codicil he removed one trustee, and revoked his legacy, appointing another with the same legacy; he revoked all the charitable legacies; and gave a less legacy to one of the charities, mentioned before, and other new charitable legacies, without specifying any fund: all held to be charged on the real estate; and therefore void as to the charitable legacies. *Leacroft v. Maynard.* - - - - - I. 279
17. Testatrix directed all her estate to be turned into cash; if amounting to £20,000, to go thus; if less, in similar proportions: then subject to some legacies, debts, &c. the *residue* of her estates in sixteenths, two to her mother for life, the others to different persons absolutely: she then made three residuary legatees: the shares given are only of the £20,000, subject to the charges; all beyond that goes to the residuary legatees. *Green v. Scott.* - - - - - I. 282
18. Interest of residue of personal estate given by Will to a woman for life; then the residue to her nieces; if they die without issue, over: the last limitation over is too remote; and on death of the aunt the nieces take the whole. *Everest v. Gell.* - - - - - I. 286
19. Devise of annuity of £50, to be purchased by executor, who till the purchase was to pay annuitant £40 a-year: executor, instead of purchasing, paid £50 a-year from

testator's rents : annuitant entitled to £40 the first year and to £50 a-year afterwards : though the Court might have charged the executor with the over-payment from the estate, the Master on a general account with just allowances cannot. *Browne v. Spooner.* - - -

I. 291

20. Testator may provide, that in case of a devolution to executors they shall not alien : but it must be very special. - - - - -

I. 295

21. Devise of personal estate for life ; then among all children of devisee, in such shares and manner, for such interests, with such survivorship, and to vest at such time, as devisee for life should by Deed or Will appoint ; in default of appointment of the whole or part, equally ; if but one, to that one, payable at twenty-one ; nevertheless the shares of any attaining twenty-one in life of devisee for life to be vested : but payment to be postponed till her death : that clause, vesting an interest at twenty-one, held to relate only to the case of default of appointment ; and, one of two children being dead without issue after twenty-one and without receiving any share, that circumstance will not prevent an appointment of the whole fund to the survivor. *Boyle v. Bishop of Peterborough.* - - -

I. 299

22. Testator, after giving life interests in stock to each of his daughters, afterwards the principal among his grandchildren, in pursuance of a power in articles of partnership appointed his executors to carry on the trade in his room, with power to dissolve, or nominate any other person ; and gave them his share of the capital and a freehold and leasehold estate in trust to carry on the trade as long as they should think fit ; and after expiration of the partnership to sell the estate, and with the produce and profits of the trade and all the rest of his estate form a fund to accumulate twelve years ; then among the grand-children living : by codicil he substituted his partner, who was his son-in-law, in the room of one executor removed ; and desired, that, if his executors should continue trade, and his grandsons *T.* and *J.* should attain twenty-one, his executors would nominate each a partner for a quarter, when the executors should think fit, with legacies at the same time, to sink into the estate, if they should decline the partnership or die before twenty-one ; the executors to advance any farther sum they might want to carry on trade ; the rest of his property among all the grandchildren except *T.* and *J.* : by another codicil he left it entirely in the discretion of the executors to appoint *J.* or not ; if they should not think proper, his legacy to be void : *T.* and *J.* both entitled to be partners and to their legacies at twenty-one : one executor, their father, being for admitting them, the other two against it : but,

if all had without fraud united in declaring *J.* unfit, they might have excluded him; in which case he could have taken nothing under this devise. *Wainwright v. Waterman.* - - - - -

I. 31

23. Testator devised his estate upon trust, that his mansion-house, park, garden, &c. pictures, plate, furniture, &c. (to go as heir-looms) should by the trustee be kept in hand, and in good order and repair, till all incumbrances paid; upon farther trust to permit testator's daughter to have, hold, occupy, use, and enjoy his said mansion-house, park, garden, &c. pictures, plate, furniture, &c. for life; upon farther trust to lay out from rents and profits all he should think necessary to keep the mansion-house, &c. in repair, then to pay the daughter an annuity of £600 for life (for whom he also charged the estate with £10,000) and to apply the surplus in discharging the incumbrances, from which he excepted the mansion-house, &c. he gave the trustee £200 a-year above all charges; and after charges paid limited the estate over. The daughter occupied the house till her death; afterwards the trustee lived in it: the daughter held to have had an equitable life estate in the house, &c. as excepted from the general devise to the trustee; who therefore upon account was not allowed for rates and taxes paid, and expense of the garden defrayed by him during her life: but allowed for them afterwards; because under this Will necessary for him to occupy either himself or by a servant: allowed for necessary expense of procuring a thing to be done, which turned out to be reasonable, though he might have come to the Court to see, whether it was proper: not allowed for costs of a suit against the daughter, voluntarily paid by him; even though she was entitled to them from the estate; nor for a park-keeper upon the trust estate, because used as his own servant.

*Fontaine v. Pellet.* - - - - -

I. 337

24. Legacy out of a fund in the *East Indies*, given over in case of death of the legatee before he might have received it, vested from death of testator. *Hutcheon v. Mannington.* - - - - -

I. 366

25. Estate devised on trust to be sold with all possible diligence, or in reasonable time, considered as sold from testator's death. - - - - -

I. 367

26. Plate excepted from bequest of personal estate to wife, after her decease over, and recited to be hereinafter given to his daughter, but not farther noticed: undisposed of. *Frederick v. Hall.* - - - - -

I. 396

27. Legacies in trust for all grand-children then in existence by name, to sons at twenty-three, daughters at twenty-one; mesne interest for education; surplus to accumulate; with survivorship; residue for all the grand-

- children generally for their benefit "as aforesaid:" by Codicil a fund set apart to pay life annuities: grand-child born after testator's death not entitled to a share of the residue; into which the fund under the Codicil falls after the purpose answered. *Hill v. Chapman.* - I. 405
28. Codicil considered as part of the Will; and intent drawn from the whole. (See Nos. 42. 89. 163.) - - - I. 407
29. Devise properly attested of land upon several trusts; remainder to such trusts as testator should by any deed appoint: whether land would pass by the deed of appointment sent to law upon a case, stating the devise to be to uses. *Habergham v. Vincent.* - - - I. 410
30. Land, devised in trust to pay debts and legacies, charged with all, that the *Ecclesiastical Court* would establish. I. 411
31. Deeds, testamentary in their nature, often required to be proved as such. - - - - - I. 411
32. Devise of land to be sold: money produced by the sale charged with simple contract debts on the intention, though doubtful (See No. 56.) *Kidney v. Coussmaker.* I. 436
33. "After paying debts" amounts to a charge of debts; for which very little is sufficient; the Court leaning that way. - - - - - I. 440
34. The leaning of the Court to charge land with simple-contract debts must be warranted by the intention. - I. 443
35. Where testator combines real estate with personal generally, the real is subject to all the burthens of the personal. - - - - - I. 444
36. Intent may be inferred; though the words, by which it appears, were unnecessary. - - - - - I. 444
37. Legacies nearly similar given to the same persons by different instruments: legatees not entitled to both. *Moggridge v. Thackwell.* - - - - - I. 464
38. Legacies to the same persons by different instruments generally presumed additional; unless contrary intent appears: of which simple repetition, if exact, is sufficient proof. - - - - - I. 472
39. Legacies by one instrument not adeemed by a second, not relating to the first. - - - - - I. 473
40. Where legacy is given only to erect a charity, legatee is a trustee at all events; and can have no pretensions for himself. - - - - - I. 475
41. Will not to be construed by subsequent circumstances. - I. 475
42. Codicil by its nature refers to a former Will, and becomes part of it. (See Nos. 28. 89. 163.) - - - - - I. 497
43. Bequest of money, to be laid out in land for establishment of minister of a chapel, void under the Act 9Geo.2. c. 36; and not supported by supposing a discretion in the trustees not to lay it out in land, the directions being imperative. *Grievess v. Case.* - - - - - I. 548
44. Where the general object of the devise is void, to support upon an intention of personal benefit the interest

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of a devisee, it must be totally separate from that object. *Grievess v. Case.*

45. Bond to pay an annuity, till a legacy, recited to have been bequeathed by the last Will of obligor to obligee, should be paid: by a previous Will he had given a legacy: but that was revoked by a subsequent Will; and a less legacy given payable, six months after testator's death, "over and above the annuity which I have secured to him for his life;" the annuity and bond were assigned by the obligee "as some provision for his mother, to be received by her during the life of the obligor as fully and beneficially, as it could have been by the obligee:" the bond and assignment were put into the possession of the testator; and continued so till his death: the legatee is entitled to the legacy, with interest, if not paid at the time; and also to the annuity for his life in trust for his mother. *Crosbie v. Murray.*

I. I.

46. Devise may be by implication, if upon a clear presumption.

47. Devise of lands to be sold in aid of personal estate, "and after death of my wife the estates not sold and the personal estate not applied to be subject as after mentioned; the rents and produce to be carried on in accumulation of 3 per cents. as aforesaid during her life, and also for five years after her death, and to be laid out in land; then if my son M. shall be living, and any lawful issue of his body, and if my son G. shall be living, and any lawful issue of his body, to them for life as tenants in common, then to their issue in moieties; if only issue of one, to that issue; if but one, to that one;" with power of settlement; "my wife to receive such provision as aforesaid neat and clear, and the residue only to be subject to the devise over to take place after her death; and if both my said sons shall be dead without issue," then to his daughter for life; after her death to her son, his heirs, &c. and if she should have any other issue, to them, their heirs, &c. on failure of issue of his sons and grandson: the devise over is attached to the single event of both sons being dead without issue at the death of the wife, or five years after at most; and one son being alive at that time, though without issue, it never took effect: but the son is not entitled to the estate absolutely on account of the contingent interest in his issue. *Graves v. Bainbrigge.*

I. 5

48. Testator directed money to be laid out in manors, lands, tenements, tithes, and hereditaments, or very long terms, with limitations applicable to real estate: the money not having been laid out, the Crown on failure of heirs has no equity against next of kin to have it laid out in



real estate, in order to claim by escheat: the devisees on becoming absolutely entitled have the option given by the Will; and a deed of appointment by one, a *fême covert*, was held sufficient indication of her intention, that it should continue personal property, against her heir, claiming it as ineffectually disposed of for want of her examination. *Walker v. Denne.* - - -

II. 170

49. Devise of freehold, and copyhold, surrendered to the use of the Will, to trustees and the survivor and his heirs, in trust to pay debts and legacies, an annuity to the testator's son, and for other purposes; then on the marriage or attaining twenty-one of his grand-daughter to convey to her for life; remainder to trustees, &c. remainder to her first and other sons in tail male; remainder to her daughters in tail general; remainder to such persons, for such estates, and subject to such charges and conditions, as he should by any deed or instrument with two or more witnesses appoint. The next day by deed poll with two witnesses reciting his Will, and that he had reserved a power of disposing of his estate farther, he directed his trustees immediately after the death of his grand-daughter and failure of her issue to convey all his real estate to the first and other sons of his son in tail male, then to his daughters in tail general, then to the right heirs of the survivor of his trustees, his heirs and assigns for ever. No conveyance was made. The grand-daughter died without issue: then the son died without issue, leaving one trustee surviving. Under the Will alone the trustees have a mere legal estate; and all the equitable interest beyond the express dispositions would result to the son, as heir: but the deed was considered as a Codicil, sufficiently executed to pass copyhold, but not freehold. The last limitation is a contingent remainder to the heir of the surviving trustee; and a conveyance was directed with an insertion of trustees to support that remainder as to the copyhold; the rents and profits of the copyhold during the life of the trustee and all the freehold to go to the heir of the testator. *Habergham v. Vincent.* -

II. 204

50. Where a testator refers expressly to a paper already written, and describes it sufficiently, it is as if incorporated in the Will. - - -

II. 228

51. Instrument, in any form, whether a deed-poll or indenture, if the obvious purpose is not to take place till after the death of the person making it, shall operate as a Will. - - -

II. 231

52. A rent is a tenement, and therefore cannot pass by Will without three witnesses, if out of freehold; the word "tenement" being in the Statute of Frauds. - -

II. 232

53. A Deed and a Will cannot unite. - - -

II. 235



54. The decisions, that land charged with legacies by a Will duly executed is liable to legacies given by an unattested Codicil, do not go upon a power reserved to the testator to increase the charge by a future act; which cannot be; but upon analogy to the case of debts. The rule has not been extended to the case of a primary charge on land; but only to a charge in aid of personal estate; from the fluctuating nature of which it is necessarily uncertain. - - - - - II. 236
55. Testatrix gave stock to trustees on trust to pay the dividends to her niece for life, and after her decease that the stock should be equally divided among the brother and four sisters of the testatrix, and in like manner to the survivors or survivor of them. The niece was residuary legatee. This is a tenancy in common between those alive at the death of the niece and the representatives of such as died in her life. *Roebuck v. Dean*. - - - - - II. 265
56. Devise of land to be sold: money produced by the sale charged with simple contract debts on implied intention. (See No. 32.) *Kidney v. Coussmaker*. - - - - - II. 267
57. This clause beginning a Will "First, I will and direct, "that all my legal debts, legacies, and funeral expenses, "shall be fully paid," is not sufficient alone to charge legacies on real estates specifically devised; for which the intent must be clear. *Kightley v. Kightley*. - - - - - II. 328
58. Where testator means for a valuable or meritorious consideration to create a charge, which by law he cannot, equity will aid the intention, and even supply a defect, as the want of a surrender: but the intent must be clear. - - - - - II. 332
59. Trust raised under a recommendation by Will to a legatee to dispose of her legacy among certain persons after her death. *Malim v. Keighley*. - - - - - II. 333. 339
60. Testator by shewing his desire creates a trust; unless plain words or necessary implication, that there is to be a discretion to defeat it. - - - - - II. 335
61. Testatrix, mortgagee of an estate, of which her brother was tenant for life, and having his bond for some arrears of interest, bequeathed to him the arrears of her mortgage on his estate; likewise a bond from him in her possession: half of the mortgage-money was paid before the Will; the principal mortgage-money does not pass. *Hamilton v. Lloyd*. - - - - - II. 416
62. The rule that after-purchased lands do not pass by a devise, does not arise from the word "having" in the Statute of Wills, but from the difference between the Roman Testaments or Wills of personal estate, and a devise by the law of *England*; which is an appointment of the person to take the specific estate in nature of a conveyance, though fluctuating till death. - - - - - II. 427

63. Devise, subject to a term of one thousand years, to *A.* in strict settlement; remainder to *B.* in strict settlement; and, after other limitations in tail, remainder upon trust to be sold: the trust of the term was to raise £4000, to be applied first to debts, legacies, &c.; the rents, profits, and emoluments, arising, growing, or received, from the estate real and personal to be applied to debts and legacies, and afterwards to be an aggregate fund and attend the inheritance; the interest of the £4000, to be paid out of the rents and profits of the estates in the term; the rents and profits to accumulate, till one of the devisees should attain twenty-one; then to be paid to him: by Codicil the testator, reciting the trust to sell, bequeathed part of the produce; and gave all the residue, and all the residue of his personal estate not disposed of by his Will, to his legatees: the residue of the money raised under the term and of the personal estate is to attend the inheritance; and the interest is payable to the tenant for life; the principal to the first tenant in tail. *Sheldon v. Barnes.* - - - - - II. 444
64. Land devised to be sold; the produce to be applied as after mentioned: if no disposition is made, the heir shall take. - - - - - II. 447
65. Testator created a term for debts and legacies, and gave £1000 to his niece to be paid immediately after his decease, if she should be then married; if not, the interest of the said legacy to be paid her for life, to be calculated and paid to the day of her death or marriage; if she should die unmarried, the legacy to lapse for the benefit of the estate; and by Codicil he gave her £200, in addition to what he had given her by the Will: held, that the additional legacy is to be raised out of the same fund, and subject to the same conditions; and the legatee, having married after the testator's death, is entitled. *Crowder v. Clowes.* - - - - - II. 449
66. A legacy, substituted for another, shall be raised out of the same fund and subject to the same conditions. - - - - - II. 450
67. Devise of lands, tenements, and hereditaments, subject to a term of eleven years, in trust to receive the rents, issues and profits, of the premises, that from time to time should accrue and become due, and dispose, &c. an advowson in gross passes; and a sale of the next presentation within the term by direction and for the benefit of the *cestuy que trust* was established. *Earl of Albemarle v. Rogers.* - - - - - II. 477
68. Bequest to the use and behoof of *A.* and in case of her decease to the use and behoof of her children share and share alike: held a life interest only in *A.* the capital to her children after her decease. *Lord Douglas v. Chalmer.* - - - - - II. 501

69. Testator devised all his manors, messuages, lands, tenements, tithes and hereditaments, and all his real estate whatsoever "except what is hereinafter mentioned and "devised" to the use of all his children successively in strict settlement; and gave two of them annuities, which he charged upon a rectory held by him under a lease for lives, which he directed to be renewed, if those two children or either should be living at his death; and that their lives or that of the survivor should be inserted in the new lease, and the fine paid out of his personal estate. He gave part of his personal estate specifically, and directed the residue to be laid out in land to be settled to the same uses as his real estate: but afterwards by a testamentary paper unattested he disposed of his personal estate otherwise: the heir contracted to sell the lease of the rectory; and upon a case directed to the Court of *King's Bench* on his bill for specific performance the Certificate was, that the lease did not pass by the Will; but devolved on the heir as special occupant: but the *Lord Chancellor* considered that title too doubtful to be forced on a purchaser. An Act of Parliament was therefore obtained. *Sheffield v. Lord Mulgrave.* - - - - -
70. Three annuities for a term of years bequeathed in trust for three children, *A.*, *B.* and *C.* respectively for life; in case of the death of either leaving any child or children his or her annuity to be equally divided between such child or children share and share alike; in case of the death of either without issue, his or her annuity to go to the survivors or survivor of them equally share and share alike; with a limitation over in case of the deaths of all without issue as aforesaid: *A.* died without issue: *A.*'s annuity went to *B.* and *C.* subject to the contingent limitations over, and upon *B.*'s death leaving children belongs in moieties absolutely to his administrator and *C.* *Vandergucht v. Blake.* - - - - -
71. Testator devised freehold estate to his brother and his wife for their lives; remainder to *A.*, his nephew, and the heirs male of his body; and for default of such issue to *B.* in the same manner; remainder over; he gave so much of the same as was leasehold to his brother and his wife for so many years of the term as they or the survivor should live; and directed, that after the decease of the survivor the leasehold premises should from time to time be held and enjoyed and belong to the several persons in succession, who should for the time being be entitled to the freehold, so far as the rules of law would admit; and gave the same direction as to the furniture of the mansion-house. By Codicil reciting, that he had devised the freehold part after failure of issue male of *A.* to *B.* in tail male, &c.; he revoked those

II.

II. 5

- limitations, and after failure of issue male of *A.* devised to others; and repeated the disposition he had made of the leasehold and furniture; *A.* takes the leasehold absolutely. *Fordyce v. Ford.* - - - - - II. 536
- A wrong description of a legatee will not defeat a legacy given to him by name. *Standen v. Standen.* - - - II. 589
- Devise of real estate to be sold and the produce with the personal estate to testator's wife for life, with power to appoint a moiety by Deed or Will with two or more witnesses: the estate was not sold: the wife, having no other real estate, by Will with three witnesses gave specific legacies, some described to have been her husband's, and all the rest, residue and remainder, of her estate and effects of what nature or kind soever, and whether real or personal, and all her plate, china, linen and other utensils, which she should be possessed of, interested in, or entitled to, at her decease: the power is executed by the residuary clause. Evidence of conversation with the person, who drew the Will, to shew the testatrix had no other real estate, rejected. *Standen v. Standen.* - - - - - II. 589
- Devise to the heir at law and his issue male in strict settlement; remainder in trust to be sold and the money to be distributed among certain persons or the survivors or survivor of them; and that the share of one should, previous to her marriage, be settled upon her for life, and after her death upon her issue, in default of issue upon her right heirs; the produce of the sale is to be considered as personal estate; and vests in the survivors at the death of the tenant for life without issue male. A settlement in trust for the husband for life, then for the wife for life, then for the children, as they should appoint, in default of appointment, equally; if no children, according to their joint appointment; in default thereof to the husband, his executors, &c. is a sufficient execution of the direction in the Will (a). *Brograve v. Winder.* - - - - - II. 634
- Testator gave the interest of a bill of exchange on the *East India Company* to his wife for life; and directed, that after her death the bill should be sold, and the money divided among certain persons with survivorship in case of the death of any in her life. The bill, which constituted the bulk of the testator's property, was paid in his life; that was not an ademption of the legacy. *Coleman v. Coleman.* - - - - - II. 639
- Testator by Will duly attested gave an annuity to his daughter charged on his real estate in aid of his personal; by Codicil not attested he gave his real and personal estate to his mother for life; during her life the

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(a) *Quære* the last point. See the note, Vol. II. page 639.

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| <p>personal estate is discharged from the annuity ; but it remains a charge on the real. <i>Buckeridge v. Ingram.</i></p> <p>77. Testator gave his personal estate to his mother for life, remainder to his children, on condition that his mother should see the fines for renewal of a lease and the interest of a mortgage paid, and be consulted as to the manner of raising the fines, that she may give her approbation, as she may think proper : she is only to keep down the interest. <i>Buckeridge v. Ingram.</i></p> <p>78. Where real estate is charged with legacies generally by Will duly attested, legacies may be revoked or charged by an unattested instrument (a).</p> <p>79. Under a devise to all the children of <i>A.</i> except <i>B.</i> a posthumous child is entitled. <i>Clarke v. Blake.</i></p> <p>80. Legacy to <i>A.</i> for life and to her children at her decease vests in all the children, as they come <i>in esse</i> ; but upon the circumstances of this case it vested in those living at the death of their mother only. <i>Spencer v. Bullock.</i></p> <p>81. Legacy by a grand-father in trust for the five children by name and all and every the child and children of his son, equally ; the shares to be assigned at twenty-one, or upon marriage of the daughters ; with power to advance money for putting out all and every or any of the sons to business. The first attaining twenty-one is entitled to receive his share then. <i>Prescott v. Long.</i></p> <p>82. The testator gave the residue of his personal estate to his wife ; desiring her to provide for his daughter <i>A.</i> out of the same, as long as she, his wife, should live, and at her decease to dispose of what shall be left among his children in such manner as she shall judge most proper. There is not an absolute trust for the children after the death of the wife. <i>Pushman v. Filliter.</i></p> <p>83. Testator gave his wife £400 a-year, in addition to £500 a-year under her settlement, in consideration of the expense and care she would incur in the maintenance of their children : she must maintain them, when at home ; but is not to be charged with education, or maintenance at school. <i>Collier v. Collier.</i></p> <p>84. Legacy in trust to pay out of the interest £60 a-year to the testator's wife for life, and the remaining interest during her life to <i>R. Duke of M.</i> and in case of his death to his eldest or only son ; and for want of issue male to his eldest or only daughter ; for want of such issue female to sink into the residue ; and after the death of his wife the testator gave the principal to the said Duke, if then living ; but if then dead, to his eldest or only issue male then living ; and for want of such issue male to his eldest or only daughter ; for want of such issue female to sink into the residue. <i>R. Duke of</i></p> | <p>Vol</p> <p>II</p> <p>II</p> <p>II</p> <p>II</p> <p>II</p> <p>II</p> <p>III.</p> <p>III.</p> |
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(a) Where the real estate is charged in aid of the personal : see ante, No. 54. Vol. II. pag

- M.* died, leaving two sons and a daughter: both the sons died: the eldest left a son, Duke of *M.* who filed the bill. The plaintiff is entitled to the surplus interest: but the principal is contingent till the death of the testator's widow. *Duke of Manchester v. Bonham.* III. 61
- Testator devised all the residue of his estates as well copyhold as freehold " (the copyhold part thereof " having been previously surrendered to the use of my " Will)" upon several trusts in favor of his wife and children: the only trust for his eldest son and heir was an annuity of £300 for life; remainder to his wife and children: the testator having never surrendered his copyhold, it was held a mistaken description; the copyhold being clearly intended to pass; and, the annuity being much more valuable, the heir was decreed to elect; and was not bound by receiving half-a-year's payment of the annuity, while abroad. *Rumbold v. Rumbold.* - - - - - III. 65
- Contingent legacy out of real and personal estate, payable two years after the event: by Codicil the testator reciting, that he found his estate would not bear that payment during the life of *A.* being chargeable with an annuity for her life, declared, he revoked that part of his Will; and that the said legacy upon the same event was to be paid twelve months next after the death of *A.* and not before. *A.* dying before the contingent event, the legacy is not payable till the expiration of the two years after it. *Wordsworth v. Younger.* - - - - - III. 73
- Testator devised his real estate to the eldest of his three natural daughters and her husband for their joint lives and that of the survivor; remainder to her sons successively in tail male; remainder to the second and her husband and issue male in the same manner; remainder to the youngest, or such person as she should first marry (if under twenty-one, with consent of trustees) for their joint lives and that of the survivor, with similar remainders: he also give a rent-charge limited in the same manner to the second, her husband and issue male; and gave a similar rent-charge to the youngest, until she shall marry (under and with the restriction above-mentioned) or for her life; and when she shall marry as aforesaid, upon the same trusts; and having given the second £10,000 on her marriage, he gave the youngest a legacy of £10,000, payable, £5000 upon her marriage (with such consent as aforesaid) and £5000 two years after. Upon her marriage without consent the condition, being established against the husband, does not affect her estate for life in the rent-charge. *Stackpole v. Beaumont.* - - - - - III. 89
- The Court is bound to give effect to all the Will. - - - - - III. 105
- Codicil to be taken as part of the Will. (See Nos. 28. 42. 163.) - - - - - III. 110



90. Testator gave the interest and produce of the residue to his two sisters for their lives; and after their decease the principal to be paid to their children, share and share alike; but whichever died before the other, then the share so paid to her to be paid to her children in equal proportions: but if she should leave no children, then the interest and produce to be paid to the survivor for her life as aforesaid. One sister died without leaving children: the survivor is entitled to the interest for life; and the principal is vested in all her children. *Taylor v. Langford.* - - - - - III.
91. Testator directed, that his wife should have liberty to occupy his house for a year, provided she continues so long in *L.*; then by a distinct clause he directed his executors to pay her a guinea a-week during her stay at *L.* Her residence there beyond the year does not entitle her to a continuation of the weekly payment. *Walker v. Watts.* - - - - - III.
92. A general charge of debts and legacies upon all the real estates of the testator not annulled by a subsequent power to sell a particular estate only and apply the produce to the same purpose: but that estate was first applied. *Coxe v. Basset.* - - - - - III. 1
93. Construction of a Will and several very inaccurate Codicils upon a disposition of the personal estate; as to the interest, whether absolute or for life; as to the extent, whether general, or specific, and exempt from debts. *Coxe v. Basset.* - - - - - III. 1
94. Though the testator has charged his real estate with debts in aid of the personal, the personal may be given exempt from the debts by an unattested Codicil. *Coxe v. Basset.* - - - - - III. 1
95. Testator gave his sister *M.* and his brother *W.* the interest of the residue equally; at the death of *M.* one half of the principal to her children; her husband by no means to have any part, but to be entirely for the children: if none, to *W.*'s children; and after the death of *W.* and his wife the other half to his children; and he excluded his eldest brother from any benefit: *M.*'s life interest is not to her separate use: the interest of the other moiety during the lives of *W.* and his wife would have vested in *W.* and therefore lapsed by his death in the life of the testator. *Brown v. Clarke.* - - - - - III. 1
96. Devise of all freehold and copyhold lands "(the copyhold part whereof I have surrendered to the use of " my Will)" subject to debts: some were surrendered; others not: the latter did not pass. *Wilson v. Mount.* - - - - - III. 1
97. A person, entitled under a Will and also paramount and against it, must elect. *Wilson v. Mount.* - - - - - III. 1
98. A *videlicet* shall be rejected if repugnant; not, if it can be reconciled and made restrictive. - - - - - III.



99. Testator gave all his waggon-ways, rails, staiths, and all implements, utensils, and things, at his death used or employed together with in or for the working, management, or employment of his collieries, and which may be deemed as of the nature of personal estate, in trust to be held, used, or enjoyed, with the collieries: under this bequest and upon the circumstances money due from the fitters and others and in the *Tyne Bank*, coals at the pits and staiths, corn, hay, horses, timber, oil, candles, fire-engines, and various other articles of the stock in trade, passed (a). *Stuart v. Earl of Bute.* - III. 212
100. "I return to *A.* his bond" in a Will is, not a release, but a legacy; and having lapsed, the bond remains in force against a surviving co-obligor. *Maitland v. Adair.* III. 231
101. Residue bequeathed to relations in the proportion the testator had given the other part of his fortune: pecuniary legatees only are entitled: not a devisee of real estate. *Maitland v. Adair.* - - - - - III. 231
102. Bequest to relations does not include those by marriage. *Maitland v. Adair.* - - - - - III. 231
103. Bequest to the youngest child of *A.* if she should have any child or children within a certain period; if no child or children within that period, then over: her eldest child, being the only one within the period described, is entitled. *Emery v. England.* - - - - - III. 232
104. Vesting of a legacy postponed to the time of payment, and a limitation over in nature of a cross-remainder implied, from the general intention; reversing a decree, that it vested at twenty-one. *Mackell v. Winter.* III. 236. 536
105. Devise in fee and bequest of personal estate to *A.* and in case of his death under twenty-one without leaving issue, to *B.*: Codicil affirming the Will in all respects except by directing, that *A.* shall not be entitled till twenty-five: *A.* dying between the ages of twenty-one and twenty-five without issue, *B.* has no title. *Scott v. Chamberlaine.* - - - - - III. 302. 491
106. Under a bequest of the use of a house with all the furniture and stock of carriages and horses and other live and dead stock for life plate passed; wine and books did not. *Porter v. Tournay.* - - - - - III. 311
107. Words not to be rejected, unless repugnant to the clear intention manifested by other parts of the Will. - III. 320
108. The construction of the Will being, that the real estate was well charged in aid of the personal with legacies, even supposing the charge not general so as to include future legacies, a legacy may be revoked and given to another person by an unattested Codicil. *Attorney-General v. Ward.* - - - - - III. 327

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(a) Reversed; see Vol. XI. page 657.

109. Testatrix by Codicil gave to *A.* the legacy given by her Will to the children of *B.* “as I know not whether any “of them are alive and if they are well provided for:” though they are living, *A.* is entitled: the construction being, that if they are living, they are well provided for. *Attorney-General v. Ward.* - - - - - III. 327
110. The legal estate in mortgaged premises held not to pass by a general residuary devise by the mortgagee. *Duke of Leeds v. Munday (a).* - - - - - III. 348
111. Testator in *India* gives all his estate and effects to *A.* in *England* in trust, and directs his property to be remitted to him; and after several legacies he gives *A.* £800; and requests him, as soon as the property is remitted, to lay out the same in the funds or other securities, which shall appear most advantageous for those who shall be benefited by it hereafter: the £800 is a beneficial legacy, not in trust. *Wadley v. North.* - - - - - III. 364
112. Limitation over upon the death of a person unmarried and without issue: “unmarried” in its usual sense meaning never having been married, “and” was construed “or” to afford a reasonable construction. *Maberly v. Strode.* - - - - - III. 450
113. Words of survivorship, added to a tenancy in common in a Will, are to be applied to the death of the testator; unless an intention to postpone the vesting is apparent. *Maberly v. Strode.* - - - - - III. 450
114. Real estate to be sold and the produce disposed of with the personal, with a power to direct the fund to be laid out in land: no such direction having been given, it was held personal property. *Maberly v. Strode.* - - - - - III. 450
115. Power not executed by general words in a Will. *Langham v. Nenny.* - - - - - III. 467
116. Estate given to such uses as *A.* shall appoint is a fee. - - - - - III. 470
117. Trust term in a Will to raise out of real estate several sums; of which some were secured by the testator’s bond and covenant: the intention being to give them as portions out of the land, not as debts or legacies, the personal estate is not applicable. *Reade v. Litchfield.* - - - - - III. 475
118. Leasehold property bequeathed in remainder in trust for a child *in ventre*, if a son, for life; and after his decease, for such of his issue male as should be his heir at law at his death; if no such then living, for such persons as should then be the legal representatives of the testator: a son being born and dying without issue, the limitation over was established in favour of the next of kin according to the Statute at the time of distribution. *Long v. Blackall.* - - - - - III. 486
119. Purchaser decreed to take a title under an obscure Will amounting to a power to sell; the legal estate not being

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(a) See the note, Vol. III. page 349.

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given descends to the heir till execution of the power; and then passes to the vendee. *Warneford v. Thompson.* - - - - -

III. 513

120. Devise to *A.* and her heirs; but if she dies under twenty-one and unmarried, to *B.* and her heirs: *A.* dies in the life of the testator, under twenty-one, and without issue, but having been married: the heir is entitled. *Chitty v. Chitty.* - - - - -

III. 545

121. Bequest by implication. *Wainewright v. Wainewright.*

III. 558

122. Money bequeathed to be laid out in land to be settled upon the testator's nephew *A.* for life; remainder to the wife of *A.* for life; with remainders in tail to the sons and daughters of *A.* by such wife: *A.* was not married till after the death of the testator: held to extend to a second wife. *Peppin v. Bickford.* - - -

III. 570

123. Money bequeathed to *A.* to remain at interest or to be by him laid out in real estates, to go with other estates devised. *A.* being tenant in tail of the real estate, and being entitled under an assignment of the money from the reversioner, subject to contingent limitations, disposed of the money by Will: the Court inclined in favour of the disposition upon the ground, that *A.* might have called for the money as absolute owner: but it was established upon the option to continue it personal estate. *Amler v. Amler.* - - - - -

III. 583

124. Testator directed his children generally to be maintained during the life of his wife, but distributed the property after her death in words which would not comprise after-born sons; they were held entitled to the former provision. *Matchwick v. Cock.* - - - - -

III. 609

125. £10,000 provided by settlement for one daughter or younger son; £15,000, if more: there being but one daughter, the father by a Will under a power reserved to him appoints the time of payment and the application of the interest of the £15,000 provided for her by settlement, and gives her the farther sum of £5000: she was held entitled to £20,000. *Phipps v. Lord Mulgrave.* - - - - -

III. 613

126. Bequest of personal estate after a contingent limitation in tail, which did not take effect, established. *Phipps v. Lord Mulgrave.* - - - - -

III. 613

127. As to the effect of a limited use of articles, which are consumed by the use, *quære.* - - - - -

III. 314

128. Notwithstanding declarations of the testator to his executor, that he never meant to call for payment of a promissory note, it was held part of the assets; which were insufficient for the legacies; a charge on the real estate failing for want of a proper attestation of the Will. *Byrn v. Godfrey.* - - - - -

IV. 6

129. Undertaking to do something if the Will is not changed, is binding. - - - - -

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130. The capital of the residue passed by implication; though the interest and dividends only were expressly disposed of. <i>Philips v. Chamberlaine.</i> - - - - -	IV.	51
131. A Will restrained in point of extent to a partial disposition by a particular enumeration and a reference to other instruments, notwithstanding the general words "personal estate." <i>Holford v. Wood.</i> - - - - -	IV.	76
132. Specific disposition by Will subject to annuities and legacies held auxiliary only; the general personal estate to be applied in the first instance. <i>Holford v. Wood.</i> -	IV.	76
133. Two annuities of equal amount in the same Will to the same person: held not accumulative. <i>Holford v. Wood.</i>	IV.	76
134. Testator devised real estate to <i>A.</i> in tail male; remainder over; and gave a sum of money in trust to be laid out in land, to be settled to the same uses: by Codicil he devised the same real estate to <i>B.</i> and his heirs; and gave every thing he had given by his Will to <i>A.</i> in as ample a manner to <i>B.</i> to be void on <i>B.</i> 's death before twenty-one, and without issue: <i>B.</i> is tenant in fee of the real estate; and is entitled to have the money paid to him. <i>Younge v. Combe.</i> - - - - -	IV.	101
135. The <i>Lord Chancellor</i> and the <i>Master of the Rolls</i> inclined to think, the legal estate in mortgaged premises passed by a general residuary (a) devise by the mortgagee to <i>A.</i> who was also executor, his heirs, executors, administrators, and assigns, for ever on the side of his mother. <i>A.</i> being nineteen, the <i>Lord Chancellor</i> would not order him to join in the conveyance under the Stat. 7 Ann. c. 19, but ordered the money to be paid into the Bank <i>ex parte</i> the infant, and said, when he should come of age, it would be very reasonable, that he should join. <i>Ex parte Sergison.</i> - - - - -	IV.	147
136. Mutual Wills by two unmarried sisters under twenty-one: the marriage of one does not revoke the Will of the other. <i>Hinckley v. Simmons.</i> - - - - -	IV.	160
137. Bequest to <i>A.</i> and in case of her death to <i>B.</i> held an absolute interest in <i>A.</i> <i>Hinckley v. Simmons.</i> - - -	IV.	160
138. Testator gave all the residue of his personal estate to his wife, except such parts as should be in and about his house; which parts he gave to his son; and directed the household furniture to go as heir-looms; and gave all arrears of rent, which should be due to him at his death, to his son: a bond to secure an old arrear of rent, and cash, both found in an iron chest, in which the steward kept the cash arising from the rents, belong to the residuary legatee. <i>Jones v. Lord Seston.</i>	IV.	166
139. Commission of Review granted upon a sentence of the Court of <i>Delegates</i> , affirming a sentence of the <i>Pre-</i>		

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(a) See the note, Vol. III. page 349.

- rogative* Court, establishing a Will. *Mathews v. Warner*.  
(See No. 176.) - - - - - IV. 186
140. An unfinished testamentary paper of no effect; the party having lived eight days afterwards. *Griffin v. Griffin*. IV. 197, n.
141. A letter to an attorney, containing instructions for drawing a Will, established as a Will. *Habberfield v. Browning*. IV. 200, n.
142. A Will, disposing both of real and personal property, with a clause of attestation, but no witnesses, established as to the personal property. *Cobbold v. Baas*. - - - IV. 200, n.
143. Commission of Review in *Ireland* upon a sentence of the Court of *Delegates*, affirming a sentence of the *Prerogative* Court. *Goodwin v. Giesler*. - - - IV. 211, n.
144. The intention of the testator, if clear and consistent with the rules of law, is to govern, without regard to the grammatical construction, or whether it deserves favour, or not. - - - - - IV. 311
145. In some cases, as for creditors, an intention will be inferred from the purpose, beyond what is expressed. - IV. 311
146. If words are capable of a twofold construction, the rule is to adopt such as tends to make it good even in the case of a deed, much more of a Will. - - - IV. 312
147. Slight circumstances are sufficient to qualify and restrain general words in a Will. - - - - - IV. 325
148. The intention of the testator is not to be set aside, because it cannot take effect to the full extent; but is to work as far as it can. - - - - - IV. 325
149. "*Heir male*" in a Will may be words of purchase. - IV. 326
150. A Will is not to be affected on account of the unmeritorious object. - - - - - IV. 329
151. Only one general rule of construction for Courts of Law and Equity applicable to all Wills; however the Court may condemn the object: the intention is to be collected from the whole Will; every word is to have effect according to the natural, common, import: words of art to be construed according to the technical sense, unless upon the whole Will plainly not so intended. The Court are bound to carry the Will into effect, if consistent with the rules of law; and if they can see a general intention consistent with the rules of law, but the particular mode is not, though that shall fail, the general intention shall take effect. - - - IV. 329
152. The amount of the property, the piety or prudence of the disposition, afford no fair ground for controlling a Will. - - - - - IV. 340
153. Where the whole property is devised, with a particular interest given out of it, it operates by way of exception out of the absolute property. - - - - - IV. 408
154. To prevent a lapse the intention must be perfectly clear. IV. 435
155. Grand-children entitled under the description of "children" in a Will; the intention upon the whole clause being children, or the issue of those who should be dead. *Royle v. Hamilton*. (See No. 168.) - - - IV. 437

156. Bequest for the improvement of the city of *Bath* construed to mean improvements carrying on under an Act of Parliament, not by private persons. *Howse v. Chapman*. - - - - - IV. 542
157. Specific disposition by Will in trust to sell and in the first place pay debts, legacies, and charges of probate and execution of the trust, and in the next place, that the residue of the money be appropriated to the improvement of the city of *Bath*, is void by Statute 9 Geo. 2. c. 36, as to a navigation share; which, being real estate, goes to the heir; and as to money on real securities, as mortgages, turnpike bonds, and commissioners' bonds for the improvement of the city of *Bath*; which go to the next of kin: the general residue undisposed of was first applied to the debts and other charges; and the deficiency was borne by the trust property, that passed to the city of *Bath*, and that, of which the disposition failed by the Statute, *pro rata*. *Howse v. Chapman*. - IV. 542
158. Words of survivorship in a Will shall not defeat the effect of words importing a tenancy in common; but shall be referred to some time, as the death of the tenant for life; or even to the death of the testator, though a construction not to be adopted, if there can be any other. *Russell v. Long*. - - - - - IV. 551
159. Indorsement upon a note "I give this note to A." may be proved as testamentary. - - - - - IV. 565
160. Favour or disfavour to the object, if the intention can be discovered, is not a ground for construing a Will. - IV. 574
161. The *Master of the Rolls* was of opinion, that upon the bequest of a debt there is no distinction between a voluntary and compulsory payment to the testator as to the question of ademption. - - - - - IV. 574
162. Testator gave to his wife the third part of all his property, that should become due to him after his decease: then, after giving some legacies, he gave all the residue of his estate in general words, subject to the payment of all his debts, funeral expenses, and legacies, upon trust to collect the same residuary estate and pay the same to certain persons. The wife is entitled to a third of the personal estate, subject to the debts, but not to the legacies. *Reed v. Addington*. - - - - - IV. 575
163. All Codicils are part of the Will. Therefore a Codicil merely for a particular purpose, as to change an executor, and confirming the Will in all other respects, does not revive a part of the Will revoked by a former Codicil. (See Nos. 28. 42. 89.) *Crosbie v. Macdonal*. IV. 610
164. *Voluntas testatoris ambulatoria est usque ad mortem*. - IV. 210
165. Testator by a Will unattested, after, among others, charitable legacies, to be distributed by his executor or executors, gave the remainder and residue of his estate, if any, and effects of what nature soever and whereso-



- ever, which he should be seised on, possessed of, &c.  
 “next of kin or heir at law whom I appoint my executor” after debts, &c. paid. He left one brother, and by deceased brothers a niece and several nephews, one of whom was heir at law. Distribution decreed according to the Statute. *Lowndes v. Stone.* - - - IV. 649
166. Legacy of £2400 in the 5 *per cent.* Consolidated Bank Annuities: decreed, that £2400 5 *per cent.* Annuities, viz. Navy Bills, should be purchased; evidence of the intention and mistake as to the fund being rejected. *Chambers v. Minchin.* - - - - - IV. 675
167. Legacy to *Price*, the son of *Price*: upon the evidence the plaintiff, the only claimant, was declared entitled. *Price v. Page.* - - - - - IV. 680
168. Grand-children may take under the description of children, if there can be no other construction: not otherwise. (See No. 155.) *Reeves v. Brymer.* - - - IV. 692
169. Every word of a Will must have a meaning imputed to it, if capable of it without a violation of the general intent or any other provision in the Will. - - - IV. 698
170. General residuary clause passes all, that is not sufficiently disposed of, as in case of lapse. *Brown v. Higgs.* - IV. 708
171. Stock included in a Will under the word “*securities*,” legacies being charged, for which the securities, properly so called, were not sufficient. *Dicks v. Lambert.* IV. 725
172. Testator gave certain leasehold houses in trust for *A.* absolutely for her separate use; and other leasehold houses in trust for *B.* for her separate use for life; and after her decease for her children; if none, to fall into the residue; and he gave the residue in trust for *A.* and *B.* to be divided between them share and share alike, and to be paid and applied in like manner for their use and benefit as the rents and profits of the leasehold premises hereinbefore settled upon them; and their receipts to be a sufficient discharge. The reference in the residuary clause is, not to the interests of *A.* and *B.* in the houses, but to the provision, that they shall take for their separate use; therefore they take the residue absolutely. *Shanley v. Baker.* - - - IV. 732
173. A leasehold house, the bequest of which, being to a charity, fails, passes under a general disposition of the residue; and does not belong to the next of kin as undisposed of. *Shanley v. Baker.* - - - - - IV. 732
174. Under a residuary disposition to the testator’s right heirs on the part of his mother his sister and nephew by a deceased sister are entitled against remoter relations, claiming on the ground of an express provision by an annuity for the separate use of the sister. *Forster v. Sierra.* - - - - - IV. 766
175. If an estate is devised, charged with legacies, which fail, the devisee, and not the heir, shall have the benefit of it. IV. 811



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| 176. Upon a Commission of Review the sentences of the Court of <i>Delegates</i> and of the <i>Prerogative</i> Court, establishing a testamentary paper as the Will, were reversed. <i>Mathews v. Warner</i> . (See No. 139.) - - -   | V. 23     |
| 177. Bequest to the testator's wife for life; then, after an appropriation to answer annuities, to the children of the testator's brothers and sisters. All the children living at the death of the testator and those born afterwards before the death of the wife had vested interests; a Codicil in favor of the same objects, only restrained to those surviving at the time of distribution, being held to apply only to the capital of the fund appropriated to the annuities. <i>Middleton v. Messenger</i> . - - - | V. 136    |
| 178. Residuary disposition of all the testator's real and personal estate in <i>Jamaica</i> , in trust to be remitted to <i>England</i> , was held specific, and not to include a debt, originally upon bond and judgment in <i>Jamaica</i> , and afterwards farther secured upon bond and judgment in <i>England</i> , under which it was received; and, being considered undisposed of, was applied in the first instance to the debts, &c. <i>Nisbett v. Murray</i> . - - -   | V. 149    |
| 179. Power, attempted to be executed by invalid instruments, held not executed by the general words of a Will containing no reference to it. <i>Mac Leroth v. Bacon</i> . - - -  | V. 159    |
| 180. Power to appoint for the benefit of a married woman and her family would not include the husband in general: but upon the whole Will an appointment in his favour was established. <i>Mac Leroth v. Bacon</i> . - - -   | V. 159    |
| 181. Legacy general, notwithstanding an appropriation of part of the property. <i>Raymond v. Brodbelt</i> . - - -  | V. 199    |
| 182. Legacy of a sum of money <i>Jamaica</i> currency decreed with <i>Jamaica</i> interest from the death of the testator. <i>Raymond v. Brodbelt</i> . - - - - -  | V. 199    |
| 183. Bequest to <i>A.</i> for life, and after her decease to <i>B.</i> and <i>C.</i> in equal moieties; and in case of the decease of either in the life of <i>A.</i> the whole to the survivor of them living at her decease. <i>B.</i> and <i>C.</i> have vested interests as tenants in common, subject to be divested only upon the contingency expressed. <i>Harrison v. Foreman</i> . - - - - -  | V. 207    |
| 184. The rule of construction of Wills is, that if the general intention can be collected, or any one particular object, expressions militating with that may be rejected, if plainly appearing to have been inserted by mistake: not otherwise; and if two parts of the Will are totally irreconcilable, the latter over-rules the former. <i>Sims v. Doughty</i> . - - - - -   | V. 243    |
| 185. Construction of several testamentary papers, that some revoked others; probate having been granted of all. <i>Beauchamp v. The Earl of Hardwicke</i> . - - -  | V. 280    |

186. The *Lord Chancellor* of opinion, that it is expedient to apply the provisions of the Statute of Frauds as to devises to Wills of personal estate. - - - - - V. 286
187. Lands, originally held under old mortgages, passed by a general devise; though no release of the equity of redemption appeared. *The Attorney-General v. Bowyer*. V. 308
188. As to the difference between debts and legacies in an implied charge on real estate by Will, *quære*. - - - V. 362
189. A claim of double legacies by two instruments, a Will and a Codicil, repelled by the internal evidence and circumstances. *Osborne v. The Duke of Leeds*. - - - V. 369
190. Whether parol evidence of the intention of the testator can be read originally in opposition to a claim of double legacies, *quære*. *Osborne v. The Duke of Leeds*. - V. 369
191. If a testator by Will gives £2000 a-year by way of jointure to any woman he might marry, and after marriage by Codicil gives his wife the same jointure, she cannot claim both. - - - - - V. 382
192. Double legacies by two instruments upon the intention. V. 382
193. Small circumstances will raise an inference against double legacies. - - - - - V. 384
194. Testator bequeathed £5000, in trust for his daughter *A.* for life, and after her decease for such child or children as she shall leave at her decease in such shares as she should think proper; and in case she shall die, leaving no child, (which was the event) then as to £1000 for her executors, administrators, or assigns; and as to the remaining £4000, in trust for such person or persons "as shall be my heir or heirs at law." The £4000 vested in *A.* and the other two daughters of the testator being his co-heiresses at law and next of kin at his death. If that union of characters had not occurred, *quære*, whether the next of kin could not claim; and, supposing the heirs intended, what description of heirs. *Holloway v. Holloway*. - - - V. 399
195. *Primâ facie* words must be understood in their legal sense; unless by the context or express words plainly appearing intended otherwise. - - - - - V. 401
196. Legacies declared specific upon clear words, and an abatement of the general legacies directed. *Barton v. Cooke*. - - - - - V. 461
197. The general personal estate not specifically bequeathed applied first in payment of all the costs, except of inquiries as to a guardian and maintenance for a specific legatee, and then to the general legacies. *Barton v. Cooke*. - - - - - V. 461
198. Legacy for the board and education of an infant, until he shall be fit to be put out apprentice, and then a farther sum with him as an apprentice fee: the infant having attained nineteen, and not having been put out, was held entitled to the legacy. *Barton v. Cooke*. - V. 461

199. If a legacy is given for the benefit of an infant in one way, and it cannot be so applied, it may be applied for his benefit in another way: as if it was to put him into Orders, and he became a lunatic. - - - - - V. 46
200. Residuary bequest to the testator's nephews and nieces *per stirpes* equally for their lives; and after the death of either that share of the principal to be paid equally to and among the children of such of his said nephews and nieces as should die; and if any die without leaving any child or children, that share to go to and among the survivors or survivor of them in manner aforesaid. Upon the death of one without a child that share goes to the survivors for their respective lives only, and will pass to their children respectively with the original shares, but upon the death of the last survivor without a child, his shares, both original and accrued, are undisposed of; notwithstanding another has left a child. *Milsom v. Awdry*. - - - - - V. 46
201. General devise of all manors, messuages, lands, tenements, and hereditaments in the County of *York* or elsewhere, with long limitations in strict settlement; and a residuary disposition of the personal estate also by very general words. The *Lord Chancellor* was clearly of opinion, that two leasehold houses passed with the personal estate, and not under the devise of land; but granted a case. *Thompson v. Lawley*. - - - - - V. 46
202. General residuary clause in a Will passes what is not well disposed of. - - - - - V. 50
203. The rule, taken from the *Ecclesiastical* Court, that a direction postponing the payment of a legacy does not prevent the vesting, prevails in a Court of Equity as to personal legacies: unless a contrary intention can be inferred; as where the time of payment forms part of the description of the person to take. The vesting of a residuary bequest is especially favoured, to prevent an intestacy; and a direction, that the interest should accumulate, and be paid with the capital, after a deduction for maintenance and preferment, is not sufficient to prevent it. As to real estate the contrary rule prevails, but subject to exceptions. *Bolger v. Mackell*. - - - - - V. 50
204. Bequest to be equally divided share and share alike: they take in common; and no survivorship. *Bolger v. Mackell*. - - - - - V. 50
205. Devise of real estate with the residue of the personal estate upon long limitations in strict settlement, including persons unborn: a subsequent direction, that none of the devisees shall take or come into possession before the age of twenty-five, was held confined to the actual possession, and not to operate by way of revocation; and therefore upon the death of the first tenant for life under twenty-five the accumulation belonged to his personal representative. *Montgomerie v. Woodley*. - - - - - V. 50

206. The testator bequeathed a legacy to his daughter, to be paid within twelve months after his decease: but if she should marry *A.*, then he revoked the legacy. She remained unmarried till about fourteen months after the testator's death; and then married *A.* They obtained a decree for the legacy. *Osborn v. Brown.* - V. 527
207. Legacy for a mourning ring to each of the testator's relations by blood or marriage confined to the Statute of Distributions, and those who have married persons entitled under it. *Devisme v. Mellish.* - - - V. 529
208. An illegitimate child not entitled to share under a devise to children generally; notwithstanding a strong implication upon the Will in favour of that child. *Cartwright v. Vawdry.* - - - - - V. 530
209. Testator gave, devised, and bequeathed, all his messuages, lands, tenements, and hereditaments, whatsoever and wheresoever, and all his monies in the funds, to trustees, their heirs, executors, administrators, and assigns, according to the several and respective estates and interests therein; and declared the trust of the rents, issues, and profits, dividends, interest and proceeds, subject to ground-rents and other out-goings in respect of his said messuages, lands, &c.: the leasehold estates pass with the freehold upon the subsequent words. *Hartley v. Hurle.* - - - V. 540
210. A contingent legacy failed: the event, which happened, not being provided for; and no necessary implication in favour of the legatee. *Parsons v. Parsons.* - - - V. 578
211. The prerogative of granting a Commission of Review is to be exercised upon the peculiar circumstances and the importance of the case. In this instance, a sentence of the Court of *Delegates* setting aside a Will, the Report of the *Lord Chancellor* was against the application: his Lordship concurring upon the evidence, that the Will was obtained, or an alteration prevented, by undue influence; and there being no question of law. Upon this proceeding no costs are given. *Ex parte Fearon.* - - - - - V. 633
212. The testator having given his wife the option to occupy his house at a certain rent, and, if she should choose to do so, declared she should have the use of the furniture, by Codicil, revoking the bequest of an annuity to her, gave her a legacy to provide furniture in case she should not choose to occupy his house or for any other purpose she should think proper. She occupied the house and furniture till her death; and her executor was held entitled to the legacy. *Isherwood v. Payne.* - - - - - V. 677
213. A clause of survivorship between two legatees, if either of them should die, confined to a case of lapse; and did not prevent the legacies vesting. *King v. Taylor.* - - - V. 806

214. Construction of a very inaccurate Will, that the words "and all I am possessed of" were confined to a specific bequest of stock immediately preceding; meaning all interest in that fund; and did not comprise the general residue; which was by a subsequent clause expressly disposed of in a different manner. *Wilde v. Holtzmeier*. V. 811
215. The words "all I am possessed of" in a Will in legal construction relate to the time of the death, not of the execution of the Will, unless explained. - - - V. 816
216. Some sense to be given to every part of the Will, if consistent with other parts: the legal sense, if possible. - V. 818
217. Illegitimate children, having acquired that character by reputation, may take under a Will, as by necessary implication intended and described. *Snelham v. Bayley*. V. 534, n.
218. Bequest to the children of A. described spinster, and nothing on the face of the Will shewing, that illegitimate children were intended: inquiry, whether she left illegitimate children refused. *Osmond v. Tindall*. - - - V. 534, n.
219. Rules of construction of Wills: every word to have effect, if not inconsistent with the general intention; which is to control: if two parts are totally inconsistent, the latter prevails: if a meaning can be collected, but it is wholly doubtful, in what manner it is to take effect, it is void for uncertainty. *Constantine v. Constantine*. - VI. 100
220. General words controlled, in order to make the whole Will consistent. *Whitmore v. Trelawny*. - - - VI. 129
221. If a testator by a paper subsequent to his Will says, he has bequeathed that, which he has not bequeathed, that paper may be proved as testamentary; and the property will pass. - - - - - VI. 397
222. Bequest of the debt, which shall be owing on a particular day, taken as it stood on that day; and not affected by consignment from the *West Indies* on account since the death of the testator; which happened previous to the day specified. *Innes v. Mitchell*. - VI. 461
223. Legacies out of real estate, given by an unattested paper, cannot stand, unless that paper is clearly referred to by a Will duly executed; so as to be incorporated with it: in this instance, there being no such clear reference upon the contents of the instrument, the legacies failed; the circumstance, that a paper was found inclosed in the same cover with the Will, indorsed as his Will, not being sufficient. *Smart v. Prujean*. - - - - VI. 500
224. A Codicil, expressed in the event of the testator's death before he joins his wife, was executed after their separation in the *West Indies* upon his voyage for *England*. That voyage being prevented by accident, he joined her: they lived together there and in *England*, having returned together; and the testator, having afterwards gone to *Corsica*, and thence to *Lisbon*, died there. The Codicil was held to be contingent, and did not take effect under the circumstances. *Sinclair v. Hone*. - VI. 607

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225. Probate not conclusive; not being refused except in a plain case. *Sinclair v. Hone.* - - - - - VI. 607
226. Bequest to the testator's wife, if living at his decease, provided she continued his widow; but if she should die before his decease, or afterwards marry again, then and in either of such cases to his father, "if he shall be living at the time of my decease or of such marriage as aforesaid, and in case he shall not be then living I give and bequeath the same to my brother." The father survived the testator: but died before the marriage of the widow. Upon her marriage the brother entitled. *Pyle v. Price.* - - - - - VI. 779
227. The Court never alters or adds to a Will without necessity. - - - - - VII. 130
228. Rule of construction not to make any intendment contrary to the plain and usual sense of the words, unless from other parts of the Will plainly appearing not intended to have that extensive operation. - - - VII. 368
229. Though the testator might not have contemplated the event, that will not affect the construction. - - VII. 369
230. A Will, not executed according to the Statute of Frauds, has no operation; not even to raise an election against a person taking a benefit in the personal estate. - VII. 372
231. Distinction as to real and personal estate. Every gift of land, even a general residuary devise, is specific; and that only, to which the party is entitled at the time, can pass: in the case of personal property what he has at his death will pass; and if the description is specific, it may operate as a direction to purchase. - - VII. 399
232. "And" construed "or" to give effect to all the words. VII. 458
233. The Court will not take into consideration the amount of the property or the number of objects for the purpose of construing a Will except in the case of specific disposition. *Sibley v. Perry.* - - - - - VII. 522
234. Testator, having directed a transfer of 3 *per cent.* Consols three months after his decease, gave several other legacies of stock "as aforesaid." Those words upon the whole Will referred to the description of the stock, not to the time of the transfer. *Sibley v. Perry.* - VII. 522
235. Residuary clause passes all personal property, that is not disposed of, as by lapse; contended upon the particular expressions to have been separated, and not intended to pass with the residue. *Cambridge v. Rous.* - - VIII. 12
236. Parol evidence not admissible to shew the intention of the testator against the construction upon the face of the Will. - - - - - VII. 22
237. The effect of a positive bequest not to be controlled by inference and argument from other parts of the Will. - VIII. 42
238. Bequest to *A.* for her and her children's use. A transfer decreed to *A.* *Robinson v. Tickell.* - - - - - VII. 142



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239. Words, having an obvious meaning, not to be rejected upon a suspicion, that the testator did not know, what he meant. - - - - -	VIII.	306
240. Devise to <i>A.</i> an infant, for life and his first and other sons in strict settlement; with remainders for similar estates. The Will farther directed "during the minority of the <i>A.</i> family," an accumulation of the rents to be laid out in a purchase, "until the minor arrives at the full age of twenty-five years," and then "the heir to take full possession of this estate." <i>A.</i> being residuary legatee, is entitled absolutely to the accumulation. <i>Bingley v. Broadhead.</i> - - - - -	VIII.	415
241. Real estate in <i>Bermuda</i> passes by a Will, not duly executed to pass real estate according to the Statute. <i>Sheddon v. Goodrich.</i> - - - - -	VIII.	481
242. Legacies and annuities, charged upon a mixed fund of the personal estate and the produce of real estate under a direction for sale. A different disposition of the whole by Codicil failing as to the real estate for want of a due execution, the charge remains upon the real estate. <i>Sheddon v. Goodrich.</i> - - - - -	VIII.	481
243. Real estate under a charge by a Will, duly attested, liable to debts afterwards contracted, and legacies by an unattested instrument, even to the witnesses to the Will. - - - - -	VIII.	495
244. The word "estate" in a Will, unless qualified, passes both real and personal estate. <i>Barnes v. Patch.</i> - - - - -	VIII.	604
245. Under a disposition by Will, to <i>A.</i> 's and <i>B.</i> 's families, the children are entitled, exclusive of their parents, and <i>per capita.</i> <i>Barnes v. Patch.</i> - - - - -	VIII.	604
246. Bequest of the testator's fortune in <i>India</i> not extended under the general words "temporal estate" in the introductory part of the Will to property in <i>England</i> , part remitted from <i>India</i> between the Will and the death, and some in its passage to <i>England</i> at his death. <i>Sadler v. Turner.</i> - - - - -	VIII.	617
247. Bequest of a sum of money in trust to lay it out upon Government or other securities in the purchase of an annuity for life, held a direction to lay it out in an annuity for life: the Will making several dispositions of stock, both as to the dividends and the capital. <i>Bayley v. Bishop.</i> - - - - -	IX.	6
248. Bequest to two persons or their children, held to give the children an interest by way of substitution only; not concurrent. <i>Cooke v. De Vandes.</i> - - - - -	IX.	197
249. If it appears upon a Will of personal estate, that something more is intended to be done, and the party is not arrested by sickness or death, the usual declaration at the beginning, "that it is his Will," is not sufficient. - - - - -	IX.	249
250. Bequest of stock, &c. and the interest and dividends to accrue, to the testator's two great nieces, equally to be		



divided, and to be assigned, transferred, and paid, to them, when and as they should respectively attain twenty-one; with limitations of their respective shares in the event of death under twenty-one to their respective children; survivorship in case of no children; and a direction, that the executors should during the respective minorities of the legatees receive the dividends, interest, &c.; and that so much as should be necessary should be applied for maintenance, &c.; and the residue accumulate for their respective benefits, until they should respectively become entitled to their respective parts or shares thereof. The surplus interest goes with the principal upon the death of one under twenty-one without children. *Sisson v. Shaw.* - - - - -

IX. 285

251. Testatrix bequeathed to her sister *B.* for life; declaring, that it was her absolute desire that she bequeath to those of her own family what she has power to dispose of provided they behave well to her. *B.* by her Will, declaring she meant to make no disposition of her sister's property, it was held a trust for the next of kin of *B.* *Cruwys v. Colman.* - - - - -

IX. 319

252. Bequest to "relations" confined to the next of kin according to the Statute of Distributions. - - - - -

IX. 323

253. Though upon bequests to "relations" with a power of selection, the party may go beyond the Statute of Distributions, that rule is adhered to, wherever the execution devolves on the Court. - - - - -

IX. 324

254. Recommendation in a Will imperative. - - - - -

IX. 546

255. Annuity, part out of the general assets, part specific, upon the intention, out of funds, some perpetual, others temporary, to be divided equally between *A.*, *B.*, and *C.*, and their heirs, or the survivor of them, "in the order they are now mentioned." A perpetual annuity, limited only with reference to the temporary funds; with an absolute power of disposition. *A.* dying in the life of the testatrix, her share goes to *B.* and *C.* equally; the concluding words, "in the order," &c. being rejected as repugnant. *Smith v. Pybus.* - - - - -

IX. 566

256. To obtain payment to the representatives the mere production of the Probate is not sufficient. Proof of the death is now required; and that the testator was the party in the cause. - - - - -

X. 289

257. Whether a bequest, to be laid out in land in a particular parish, shall, if land cannot be procured there, be laid out elsewhere, *quære.* - - - - -

X. 610

258. Bequest, to be laid out in land; pointing to a particular estate: if that fails, it may be laid out in other land; the particular direction being only the mode of executing the primary intention for a purchase. - - - - -

X. 618

259. A boy of the age of fourteen competent to make a Will of personal estate. - - - - -

XI. 11

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260. Issue, <i>Devisavit vel non</i> , must be granted. - - -	XI.	53
261. Construction, to support the intention upon the whole Will, against the strict grammatical rule. - - -	XI.	148
262. The words " what remains," at the close of a bequest of a specific fund, held a general residuary disposition : the full sense not being necessarily confined. <i>Crooke v. De Vandes</i> . - - - - -	XI.	330
263. Bequest of the debts, that shall be due at the death of the testator by mortgages, bonds, or open accounts, from certain persons, extended from the explanation of a similar bequest by another clause to debts of every description: therefore including judgments. <i>Stenhouse v. Mitchell</i> . - - - - -	XI.	352
264. Bequests of leaseholds for years determinable upon lives, for life, with remainder over, for all the residue of the testator's term and interest to come therein at his decease. The term expired in the life of the testator; who continued to hold, and paid half a-year's rent before his death, as tenant by the year. Upon the general words, unrestrained, comprising the interest from year to year, and the intention upon the whole Will, a subsequent lease obtained by the executrix, the widow, and tenant for life under the Will, was held subject to the uses of the Will; as the residue of the term at his death, if any, however short, would have been. <i>James v. Dean</i> . - - - - -	XI. 383. XV.	236
265. A renewed lease does not pass by a previous Will, bequeathing the lease or the premises held on lease. (See No. 296.) - - - - -	XI.	387
266. Words, <i>primâ facie</i> equivalent to pass future interests in personal estate, to have that effect: unless controlled by the context. - - - - -	XI.	389
267. A renewed lease does not pass by a general bequest of all leasehold estates, unless controlled by the context. - - - - -	XI.	391
268. A right of pre-emption given by Will, whether at a price expressed or to be fixed by the trustees, will be executed: the construction in the latter case being a reasonable price, to be ascertained by reference to the Master. But to pass such right to the heir or devisee the intention to accept the offer must appear by some act, or at least by Will. In this case, the Will, directing, that <i>A.</i> or whoever shall after the testator's decease be entitled to estates in settlement may have the refusal, <i>A.</i> having died without shewing such intention, and a tenant for life of part of the settled estates, not by the settlement, but, under a Recovery by <i>A.</i> not answering the description, it was held, that the right did not then exist in any one. <i>The Earl of Radnor v. Shafto</i> . - - - - -	XI.	418

269. In trying the meaning of phrases in a Will all circumstances may be looked at, in which the Court might have been called upon to determine the meaning of the same phrases applied to a different state of circumstances. - - - - - XI. 457
270. Trust by Will as to a moiety of the share of the testator's married daughter *A.* for her separate use, to the end that it may not be subject to the control of *B.* her present husband or any other husband; remainder to her husband *B.* for life; remainder for all the children of *A.*; and in case there shall not be any children of *A.*, or all shall die before twenty-one, for the survivor of *B.* and *A.* his wife, his or her executors, &c.; and as to a moiety of each of the shares of each of his two unmarried daughters, "upon the like trusts and under the like "restrictions" as described concerning the share of *A.*, "so and in such manner as that the same may be secured for the benefit of his said daughters and their "children, and not be subject or liable to the control "of any husband they may happen to marry." One of the unmarried daughters having married and died without issue, her husband surviving not entitled to any interest in the moiety, the subject of the trust created by the Will. *Judd v. Wyatt.* - - - - - XI. 483
271. Testator gave all his waggon-ways, rails, staiths, and all implements, utensils and things, at his death used or employed together with or in or for the working, management, or employment, of his collieries, and which may be deemed as of the nature of personal estate; in trust to be held or enjoyed with the collieries. Decree by Lord *Rosslyn*, (Vol. III. 212), that under this bequest and upon the circumstances money due from the fitters and others, and in the *Tyne Bank*, coals at the pits and staiths, corn, hay, horses, timber, oil, candles, fire-engines, and other articles of stock in trade, passed. That Decree, affirmed, upon a rehearing by Lord *Eldon*, but with considerable doubt, was reversed by the *House of Lords.* *Stuart v. Marquis of Bute.* - - - - - XI. 657
272. Under a bequest of "my house and all that shall be in "it at my death" cash passes: not promissory notes and securities. Whether bank-notes should be considered cash for this purpose, *quære.* - - - - - XI. 662
273. "Goods and chattels" will pass all personal estate: but after "furniture," &c., are restrained to articles *ejusdem generis.* - - - - - XI. 666
274. A silversmith bequeathing all his furniture, books, goods and chattels, his stock in trade would not pass: though the plate in his house, as household furniture, would. - XI. 666
275. Construction of an obscure Will: 1st, That the income only, not the capital, was disposed of: 2dly, that the

- disposition was in favour of the younger children; excluding the eldest. *Sainsbury v. Read.* - - - XII. 75
276. Devise, in default of issue male of *A.* to the first daughter living at the death of the testator, who should attain twenty-five, for life, with remainder to her first and other sons in tail male; remainders over; subject to a trust for debts and accumulations of the surplus rents and profits, until a son or daughter should first come to the actual possession of the estates or receipt of the rents: after that period such persons to take the surplus rents; and the surplus of the accumulation after payment of the debts to be paid to such person or persons, who by the limitation should first come to the actual possession of the estates, or receipt of the rents and profits. A daughter living at the death of the testator, and having attained twenty-five, entitled to possession of the estate and to the accumulated fund. *Barker v. Barker.* - - - XII. 409
277. The Court of *Chancery* will not interfere, by appointing a Receiver, upon the mere ground, that two Wills are in controversy in the Spiritual Court; and no special case; as that the property is in danger, and cannot be secured by Administration *pendente lite* (a). *Richards v. Chave.* - - - XII. 462
278. The word "effects" in a Will retrained to articles *ejusdem generis* with those specified; though the consequence was a residue undisposed of. *Rawlings v. Jennings.* - XIII. 39
279. Bequest to the testator's wife of "£200 per year being "part of the monies I now have in Bank Security entirely for her own use and disposal;" together with all his household furniture and effects: interests for life being expressly given to other persons. An absolute interest to the wife in Bank Stock, sufficient to produce £200 a-year: not a mere annuity for her life. *Rawlings v. Jennings.* - - - XIII. 39
280. Will not construed by reference to a settlement; the provisions differing in some respect; though a substitution was intended. *Hixon v. Oliver.* - - - XIII. 108
281. Distinction between repugnancy and a qualification. *Hixon v. Oliver.* - - - XIII. 108
282. Construction of a Will, giving the real and personal estate to the testator's son, his heirs, executors, &c. when he shall attain twenty-one, or marry before that age with consent: in case of his marriage under that age without consent the real estate to be conveyed to him and his children in strict settlement; remainder to the daughters; and a subsequent limitation of the personal estate to the daughters, in case the son should not attain twenty-one, or marry before that age with con-

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(a) See the note, Vol. XII. page 464.

- sent; that the son, having married under twenty-one without consent, attaining that age became absolutely entitled to the personal estate. *Austen v. Halsey.* - XIII. 125
283. Circumstances *dehors* the Will may be evidence as to the property; not as to the intention. - - - - XIII. 174
284. Two Wills, originally duplicates; but one altered and cancelled; and a Codicil, without date. After three verdicts for the devisee the *Lord Chancellor*, being satisfied with the result of the third trial, refused a fourth. *Pemberton v. Pemberton.* - - - - XIII. 290
285. A Court of Equity has no jurisdiction to declare, what is or is not a man's last Will. - - - - XIII. 297
286. The course upon a bill by an heir, impeaching a Will, is to direct him to bring an Ejectment; removing obstacles from terms, &c. Whether an Issue proper upon such a bill, *quære.* - - - - XIII. 297
287. Presumption, that the cancellation of one duplicate of a Will cancels the other; though both are in the testator's possession; and the cancelled instrument had been altered. In the two latter cases the presumption weaker. - - - - XIII. 310
288. A devise failing, the effect of a paramount title, established as to other premises, against the express intention, that they should go together. *Southey v. Lord Somerville.* - - - - XIII. 486
289. Effect of a direction for an inventory, &c. restraining a bequest of furniture, &c. to an interest for life. *Southey v. Lord Somerville.* - - - - XIII. 486
290. Residuary disposition among legatees in proportion to the sums "bequeathed to them by this my Will," held exclusive of legacies by a Codicil, directed to be taken as part of the Will. *Henwood v. Overend.* - - - - XIII. 383, n.
291. Bequest of the dividends of stock in trust for the testator's nephew, son of his younger brother *B.* for life; unless under the Will he should become entitled to the testator's real estate in *America*, devised to *B.* and his first and other sons in strict settlement, in remainder after similar estates to the testator's next brother *A.* and his issue male; and in that event, and so from time to time afterwards, or, if any future possessor should bar the intail by Recovery or other means, as to the capital, for such person as shall be heir apparent or expectant next to the person then in possession; or, if he should have joined in barring the intail, for the person next in succession to him. After the death of *A.* the title of his eldest son to the estate being in consequence of the *American* revolution confiscated in 1779, upon the death of the son of *B.* the second son of *A.*, his eldest son having no issue, was held entitled to the dividends of the stock, while his elder brother should have no issue male. *Penn v. Barclay.* - - - - XIV. 122

292. Construction of a Will, with this residuary clause; "all  
" the remainders of my different bequests," to trustees  
for charitable purposes; "and any thing not specified  
" I commit to the discretion of my executors;" as passing  
the general residue by the former words to the charity,  
not by the latter to the executors; who would not under  
those words have been trustees for the next of kin: the  
devise for the charity void as to real estate; or per-  
sonal, connected with land, as leaseholds and mort-  
gages, by Statute 9 Geo. 2. c. 36. The charges upon  
the fund apportioned accordingly. *Paice v. The Arch-  
bishop of Canterbury.* - - - - -
293. Legacy to A. but if the executors, after named, shall  
think it more for his advantage to have it placed out,  
and to pay him the interest, for life, as they in their  
discretion shall think fit, empowering them accordingly;  
and directing, that after his decease the said sum should  
be divided among his children, and, for default of  
children, over. One of the executors being dead, and  
the others having renounced, the legacy was held to be  
absolute in the legatee; who had taken the benefit of  
an Insolvent Act. *Keates v. Burton.* - - - - -
294. Testatrix appointed his daughter in law his sole exe-  
cutrix, to have and enjoy all his real and personal es-  
tate, all the goods, cattle, chattels, (enumerating several  
other articles of personal property) during her life;  
but not to diminish nor commit waste on the lands; and  
his nighest heir at law to enjoy the same after her death.  
An estate for life only in the whole, both real and per-  
sonal estate; with remainder to the heir at law. *Gwynne  
v. Muddock.* - - - - -
295. If the meaning of a Will is ascertained, reasoning from  
supposed cases will not induce the Court to make a  
different construction; but can only lead to a conclusion,  
that the testator did not see all the consequences: but  
the absurdities, improbabilities, and inconsistencies,  
which may arise out of cases, falling within one con-  
struction or another, are attended to, with a view of  
ascertaining the meaning. - - - - -
296. A renewed lease does not pass by a previous Will, be-  
queathing the lease, or the premises held on lease.  
(See No. 265.) - - - - -
297. Testatrix, reciting, that she was possessed of £12,700,  
3 per cent. Consolidated Bank Annuities standing in her  
name, gave and bequeathed the same or so much of  
such Bank Annuities as should be standing in her name  
at her death. At the date of her Will and at her death  
she had near £15,000 in that fund, besides other Stock.  
The excess beyond the sum mentioned did not pass.  
*Hotham v. Sutton.* - - - - -

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XV. 319



298. A residuary bequest in general terms: Revocation by a Codicil as "to plate linen household goods and other effects (money excepted.)" The exception prevents the restrained construction, in general, of the words "other effects:" *viz. Ejusdem generis*: stock therefore, which does not pass under the word "money," was included, with leasehold and all personal property, except money and bank-notes. *Hotham v. Sutton.* XV. 319
299. Rule of construction upon the effect of general words in a Will, as applying to rents and profits undisposed of, reversions, &c. to consider as intended what falls within the usual sense; unless declaration plain to the contrary. XV. 406
300. The word "effects" in a Will equivalent to "property" or "worldly substance." XV. 507
301. Express bequest, or power, not controlled by the reason assigned; which, though it may aid the construction of doubtful, cannot warrant the rejection of clear, words. XVI. 46
302. Residuary bequest to A. "in case she should have legitimate children; in failure of which" to go over. A. having only one child born alive, who died before her, entitled absolutely. *Wall v. Tomlinson.* XVI. 413.
303. General residuary disposition of real and personal estate, "not hereinbefore specifically disposed of" held to comprehend specific legacies lapsed; the word "specifically" being construed "particularly." *Roberts v. Cooke.* XVI. 451
304. Construction of a Will; giving to the testator's daughter, by the description of heir under his Will, the legacy of a legatee, who died during the testator's life, by way of special substitution, not merely by lapse to her, as the residuary legatee. *Rose v. Rose.* XVII. 347.
305. Effect of the word "estate" in a Will; as importing the absolute property. XVIII. 195
306. Testator directed his two illegitimate children by C. B. naming them, to be maintained; and gave them legacies; and gave to all the other children he might have by her £6000 each; and after other bequests the residue among his said children. By Codicil he directed maintenance of another child born since; also interlining his name with those of the other children in the first part of the Will only. That child entitled only to maintenance and a share of the residue, not to the legacy of £6000. *Arnold v. Preston.* XVIII. 288
307. Term for ninety-nine years in a Will restrained to a life by implication from a subsequent limitation, not after the end of the term, but after the failure of that life. XVIII. 421
308. Of two inconsistent limitations in a Will the latter prevails. XVIII. 421
309. Will not to be construed by something *dehors*, as by the state of the property, where no latent ambiguity. XVIII. 466



310. Different construction of the word "surplus" from that, which it commonly bears, inferred from the expression of the Will. - - - - - XVIII. 466
311. More scope given to the intention in Wills than in Deeds. XIX. 359
312. Distinction upon the effect of testator's declarations of intention, though conformable to what he afterwards does, whether he was or not then able to converse on the subject. - - - - - XIX. 507
313. Rules for construction of Wills: the intention, if possible, to be collected from the words, not from circumstances *dehors*; upon general principles and established rules, not by conjecture; and without inquiring, whether the personal estate is sufficient for the debts. - - - - - XIX. 521
314. Of two repugnant intentions in a Will the most convenient executed; as where all children are intended to take, and also the first attaining twenty-one to have its share. The latter intention prevails; though necessarily excluding subsequent children. - - - - - XIX. 570
315. Under a disposition of personal property by words, used in devising real estate, those inapplicable are omitted. - XIX. 581
316. Every part of a Will contemporary by the execution. - XIX. 647
317. Words transposed to make sense of a Will, otherwise insensible; and to make them take some effect rather than be totally void; not where plain and sensible: much less to let in different devisees and legatees. - - - - - XIX. 653
318. Natural construction of words in a Will adopted, unless there is such an impossibility of so construing the Will as to authorise their rejection, or such uncertainty, that no effect can be given to them. - - - - - XIX. 654
319. Words in a Will not to be rejected, unless they cannot by any possibility have a rational construction. - - - - - XIX. 654
320. Effect to be given to a Will, if a meaning can be found. - XIX. 664
321. Testator bequeathed to his wife the lease of his house and all the furniture, &c. then for life the interest of all money he should die possessed of; then half of the debts due to him at his death, (one excepted, which he directed the debtor to retain as long as he pleased, paying the interest to her) to be disposed of as she thought fit; in case the interest of the money he should die worth should not be sufficient for her maintenance, the executors to allow part of the principal out of the debts, except that before excepted, to make her life easy and comfortable; after her death the interest of all money remaining to his sister; after her death to her daughter all sums remaining for ever; if they die before his wife, one-half of all sums remaining to be disposed of as his wife should think fit; the other to A. Upon bill by the testator's niece against the executors of the wife the niece held entitled to all beyond the debts and a moiety of all debts but that excepted; the other moiety to the wife's executors; who, being

also executors of the testator, were decreed to take out of the wife's share a sum advanced under their power.  
*Collet v. Lawrence.* - - - - -

I. 268

**AMBIGUITY.—EXECUTION.—EXECUTORY DEVISE.—MISTAKE.  
REPUBLICATION.—REVOCATION.—WITNESS.**

**AMBIGUITY.**—1. } Latent and patent distinguished.  
2. }  
3. Instance of latent.

1. Latent ambiguity arises *dehors* the Will; and evidence is admissible to explain it; as in case of two manors of the same name, or an inadequate description of a child: not to explain a patent ambiguity upon the face of the Will. - - - - -

I. 259

2. Latent ambiguity produced and dissolved by parol: but parol never admitted on patent ambiguity. - - -

I. 415

3. Bequest to the son and daughter of one, who has several sons: latent ambiguity. - - - - -

I. 415

**EXECUTION.**—1. Declaration before the witnesses equivalent to signature.

2. Construed in Equity as at Law.

3. Separate attestations, with acknowledgment before those, who did not see testator sign, good.

4. By declaration at the beginning.

1. Will subscribed by three witnesses, before whom testator declared it to be his Will, but did not sign it: such declaration is equivalent to signing it before them; and such Will is good within the fifth section of the Statute of Frauds; and is also a good Will of revocation within the sixth. *Ellis v. Smith.* - - - - -

I. 11

2. The construction of the execution of a Will the same in equity as at law. - - - - -

I. 16

3. Witnesses may attest separately; in that case if testator acknowledges before each, or signs before one, and acknowledges before the rest, it is good; bad, if he signs it before each, because three different executions, and no one good within the Statute. - - - - -

I. 16

4. "I, A. B. do make this my Will" equivalent to signature, and, if acknowledged before three witnesses, a good execution within the Statute of Frauds. - - - - -

XVIII. 183

**EXECUTORY DEVISE.**—1. To the youngest or only son at twenty-one; vested in an only surviving son, and not to wait the father's death; but liable to be divested.

2. In its nature equitable; becomes legal estate only by application of the Statute of Uses; extended to cases not in its contemplation.

## EXECUTORY DEVISE.—3. Accumulation no objection

4. }  
 5. }  
 6. } Limits of.  
 7. }  
 8. }  
 9. }  
 10. }

1. Devise of personal estate and of rents and profits in trust to accumulate, and be laid out in land conveyed with the real to the youngest or eldest son of the trustee at twenty-one: held a vested interest in an executory devise in an only surviving son; but to wait till the death of the father: but liable to be divested by birth of another son. The trustee received the rents for his son several years; and received the rents till his death; but never laid them out in land: directed: those accrued after the son made his will to be an equitable interest in land, and to pass by it. *Perry v. Phelps*. - - -
2. Executory devise is in its nature equitable; and a legal estate only by application of the Statute of Uses; which executes every species of interest which the Court of Equity would before; and that has been extended to cases not in contemplation of the Statute. - - -
3. The purpose of accumulation no objection to an executory devise. - - -
4. The rule as to executory devise, allowing any number of lives in being, a reasonable time for great number of years, is now the clear law. - - -
5. The number of contingencies for an executory devise material, if they are to happen within the limits allowed by law. - - -
6. Reasons for allowing the ten months and ten years after lives in being to postpone the vesting of an executory devise. - - -
7. Executory devises not to be governed by the rule as to common-law conveyances: but the question is whether they are to happen within a reasonable time or not. - - -
8. Every executory devise is good, that does not violate the rule against perpetuity: i. e. that does not tend to make land inalienable beyond the period allowed by law for legal estates. - - -
9. Since the Revolution judges have disapproved of the rule against perpetuity in executory devise: but there is no instance of a limitation of the number of lives. - - -
10. Reason for allowing the twenty-one years after death of the testator for executory devise. - - -

MISTAKE.—1. }  
 2. } When corrected by evidence.

## MISTAKE.—3.

4. } When corrected by evidence.  
 5. }  
 6. }  
 7. } Of name or description does not defeat a legacy.  
 8. }  
 9. }  
 10. } A ground of relief only on the clear intention.  
 11. }  
 12. }  
 13. In the amount of a legacy revoked by Codicil.  
 14. Of the christian name corrected notwithstanding delay.  
 15. Evidence of it not admitted to affect the construction.

1. Annuity bequeathed to testator's brother *Edward* for life, remainder to his children by his present wife. At the date of the Will he and his wife were dead; and their children had other legacies under it; and testator had only one brother, *Samuel*, having a wife and children, whom he had been in the habit of calling *Edward* and *Ned*. His children held to be entitled upon these circumstances. *Parsons v. Parsons*. - - - I. 266
2. Testator's mistake not rectified; because nothing to shew, what would have been the intention, if no mistake. *Smith v. Maitland*. - - - I. 362
3. Testator devised to all the children of his two sisters *A.* and *B.*: *A.* long before the date of the Will changed from the *Jewish* to the *Roman Catholic* religion; was baptized by a new name; and became a professed nun at *Genoa*: bill by the children of *C.* a third sister, living with *B.* at *Leghorn*, upon the ground of mistake in testator, and evidence of intent to provide for his sisters at *Leghorn*, dismissed. *Delmare v. Robello*. - I. 412
4. Testator gave a sum, part of his 4 *per cent.* Bank Annuities, to his wife for life, and after her decease to several relations. Evidence was admitted, that he had no such stock at the date of the Will, having previously sold it all, and invested the produce in Long Annuities, and to shew the cause of the mistake; and the legacies were established. *Selwood v. Mildmay*. - - - III. 306
5. Testator bequeathed part of his 3 *per cent.* Consolidated Bank Annuities. Upon evidence, that he had no Stock, payable at the Bank, at the date of his Will or at his death, but that he had 3 *per cent.* South Sea Annuities, the legacy was established out of that fund. *Dobson v. Waterman*. - - - III. 308, n.
6. Testator by his Will gave legacies to *A.* and *B.* describing them as grand-children of *C.*, and their residence in *America*: by a Codicil he revoked these legacies, giving as a reason, that the legatees were dead: the fact not

- being true, they were held entitled upon proof of identity. *Campbell v. French.* - - - - -
7. Legatee entitled notwithstanding a mistake of his name. III. 3
  8. Testator gave £100 in trust to pay the interest to *A.* till her daughter *B.* shall attain twenty-four; and then he gave the said £100 and the interest then due to her said mother *B.* This legacy decreed to the daughter at the age of twenty-four. *Clarke v. Norris.* - - - - - III. 3
  9. A Will cannot be varied upon the ground of mistake; unless the alleged mistake is clearly inconsistent with the intention upon the whole Will. *Mellish v. Mellish.* - - - - - IV.
  10. Mistake in a Will corrected upon the clear intention appearing on the whole Will. *Philips v. Chamberlaine.* - - - - - IV.
  11. A mistake in a Will cannot be corrected, or an omission supplied, unless it clearly appears by fair inference upon the whole Will. - - - - - IV.
  12. Two inconsistent Wills: a Codicil referring to the first by date as the last Will cancels the intermediate Will; and evidence of mistake cannot be admitted. - - - - - IV. 6
  13. A testator by Codicil revoked the legacy of £50 bequeathed to his sister. The only legacy given to her was £100, given by the Will: as to the effect of the Codicil, *quære.* *Lord Carrington v. Payne.* - - - - - V. 4
  14. Though the christian name of the legatee was mistaken in the Will, the legacy was established upon the description and evidence; notwithstanding great delay in filing the bill. *Smith v. Coney.* - - - - - VI.
  15. Evidence of mistake not admissible to affect the construction of a Will. - - - - - XIII. 3

# REPUBLICATION.—1.

2. Implied from a Codicil referring to it and attested: not from mere annexation: intent to consider it of a subsequent date, appearing as to land in writing, sufficient without re-execution or particular intent to re-publish.
3. By Codicil, declared to be a Codicil to his Will not then at hand.
5. By Codicil attested; though no such intention expressed.
1. Lands purchased after a general devise passed under it; republication being implied from a Codicil concerning personalty referring to the Will, directed to be taken as part of it, and attested by three witnesses. *Barnes v. Crowe.* - - - - - I. 4
2. Since the Statute of Frauds annexation of a Codicil to a Will not admissible evidence of republication, because parol. - - - - - I. 4
3. To republish a Will re-execution not necessary, nor a particular intent to republish: intent to consider it as of a subsequent date is sufficient; which intent in case of land must since the Statute of Frauds appear in writing according to the provisions of the Statute. - - - - - I. 4

4. Testator devised all his real estate to his sister for life; remainder to her children as she should appoint; for want of appointment, to all her children and their heirs as tenants in common. His sister having two daughters, by a Codicil, declared to be a Codicil to his Will not then at hand, he gave one of them an annuity; and directing his annuities to be paid out of his 3 *per cent.* Stock, he charged them on his real estate in case of a deficiency: and, directing the residue of his personal estate to be invested in freehold lands and hereditaments, he recommended to his sister to settle and convey or join with her husband in settling and conveying all his estates and property, which she might derive from him after his decease, to the use of her two daughters for life, in such parts, shares, and proportions, as she should approve, with remainder to their respective issue, and cross-remainders and the usual powers and clauses in strict settlement. The testator's sister died in his life; and her two daughters were his co-heiresses. Some real estates were purchased between the execution of the Will and Codicil. As to the real estate the Will is not revoked, but is republished by the Codicil; and the two nieces are entitled to all the real estates and to those directed to be purchased as tenants in common in fee. *Meggison v. Moore.* -
5. A Codicil, with three witnesses, though relating only to personal estate, and expressing no intention as to republication of the Will, is a re-publication; and therefore, the Will containing a general devise, lands purchased in the interval pass. *Pigott v. Waller.* -

II. 630

VII. 98

- REVOCATION.—1. The same rules in Law and Equity.
2. By settlement, in performance of articles, conveying the whole fee; and some of the purposes inconsistent with the Will and Articles.
3. By conveyance for a partial purpose *pro tanto* only.
4. ) Not by mere partition, or merely taking the
5. ) legal estate,
6. By Recovery without intention.
7. By a covenant.
8. Not by conveyance in pursuance of articles.
9. Rules as to legal estates applied to equitable. Distinction of mortgage.
10. In Law and Equity by Recovery.
11. By a different modification: not, where the same estate and interest changed only as to the quality.
12. ) Not by conveyance for payment of debts or
13. ) mere partition.
14. In Equity by articles to sell.
15. By settlement on marriage.

16. By conveyance, though never completed.
  17. } By lease *pro tanto* only: so in Equity by
  18. } mortgage in fee or for debts.
  19. By deviser's feoffment or Recovery to the use of himself in fee.
  20. By mortgage in fee, or for debts *pro tanto* only.
  21. } By marriage and birth of a child.
  22. }
  23. Variation of the order of limitations distinguished, as operating by way of substitution only, from revocation generally.
  24. By contract for sale.
  25. Not by mortgage in fee to devisee.
  26. Whether by marriage and birth of a child under particular circumstances.
  27. By cancelling and alteration with pencil.
1. The rules as to revocations of Wills are the same in Law and Equity. *Brydges v. The Duchess of Chandos.* -
  2. Articles to settle estates of the husband, subject to certain uses and trusts, on the first and other sons in tail male; remainder to the husband in fee: the husband, confirming the articles, devised the same estates, in case he should die without issue male, or on failure of issue male in the life of his wife; and by a subsequent settlement in performance of the articles conveyed to trustees and their heirs (after certain uses and trusts) to the use of the first and other sons in tail male; remainder to himself in fee; the whole fee being conveyed, and some of the purposes being inconsistent with the Will and the articles, the Will is revoked as to the settled estates. *Brydges v. The Duchess of Chandos.*
  3. If lands devised are conveyed for a partial purpose, as a mortgage or payment of debts, it is a revocation *pro tanto* only. *Brydges v. The Duchess of Chandos.* -
  4. Partition is no revocation of a devise: otherwise, if the object extends farther, even merely to a power of appointment. - - - - -
  5. Legal estate taken after a devise of the equitable estate: that is no revocation. - - - - -
  6. A Recovery after a Will, though no intention to revoke, is a revocation. - - - - -
  7. A covenant may be a revocation of a Will. - - - - -
  8. By marriage articles the husband covenanted to convey to the use of himself for life; remainder in trust to secure an annuity to his wife for life in bar of dower; remainder to trustees for years to raise portions; remainder to the sons and daughters successively in tail; remainder to his own right heirs; afterwards he devised upon condition that he should have no issue; and after the Will he, in pursuance of the articles, conveyed to trustees and their heirs to the uses and trusts of the articles;



# WILL.

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Vol. Page

- the Will held not revoked. *Williams v. Owens*. (See Vol. II. page 606, the conclusion of the note.) - - II. 595
9. The rules as to revocation, applied to legal estates, are in equity applied to equitable estates. Mortgage in fee is a total revocation at law, but in equity *pro tanto*. - II. 598
10. Recovery by tenant in tail with reversion in fee is a revocation at law; so in equity, if an equitable estate. - II. 599
11. Where a devised estate is differently modified, there is a revocation; otherwise, where the testator remains with the same estate and interest, and subject to the same means of disposition, though changed as to the legal or equitable quality. - - - - - II. 599
12. Conveyance in fee for payment of debts is no revocation. II. 600
13. Fine for the mere purpose of a partition is no revocation even at law. - - - - - II. 600
14. Articles to sell a devised estate are a revocation in equity, but not at law. - - - - - II. 601
15. Devise by tenant in fee, in case he should die without leaving any issue living at his decease, and subject to such jointure or jointures, as he might make upon the woman he might marry: by lease and release, previous to the marriage of the deviser, the devised estates were conveyed to trustees and their heirs; as to part, subject to certain trusts to the use of the deviser and his heirs till the marriage; and afterwards, subject to other trusts, to the use of him for life; remainder to trustees to preserve, &c. remainder, subject to farther trusts, to the use of the first and other sons of the marriage in tail male; remainder to the deviser in fee; and as to the other part, to the use of the deviser till the marriage; and afterwards, subject to a jointure to the intended wife, to the use of the deviser in fee: by an article executed previously to the Will in contemplation of the said marriage, provisions were made as the basis of a settlement of the same nature, but in certain respects different from that, which was executed: the Will is revoked as to the whole estate both in law and equity: a settlement having been made previously to the marriage, the articles were laid out of the case; and parol evidence of an intention not to revoke was rejected. *Cave v. Holford*. - - - - - II. 604, n. III. 650
16. Revocation of a Will by a conveyance never completed. III. 653
17. Lease for years or life is a revocation of a Will *pro tanto* only. - - - - - III. 653
18. Mortgages in fee and conveyances in fee for payment of debts revoke a Will *pro tanto* only in equity. - - - III. 654
19. If testator makes a feoffment after the Will to the use of himself in fee, or suffers a Recovery, it is a revocation. III. 664
20. By a mortgage in fee of a devised estate or a conveyance in fee for payment of debts the Will is revoked *pro tanto* only. *Earl Temple v. The Duchess of Chandos*. III. 685

21. Whether by the birth of more children subsequent to the date of the Will, and after the death of the testator's wife his second marriage, but no children by that, the Will is revoked, *quære*. *Gibbons v. Caunt*. IV. 840
22. A subsequent marriage and the birth of a child revoke a Will. *Quære* as to the propriety of admitting evidence against the presumption. - - - - - IV. 848
23. Devise of real estates to trustees and their heirs, upon trust to convey upon certain trusts; and, subject thereto, to several natural sons successively in strict settlement. The testator also gave the residue of his personal estate upon trust to be laid out in land, to be settled to the same uses, &c. A Codicil, revoking so much of the Will as directed the settlement of his said estates upon his sons, and varying the order of the limitations, was considered as confined to that object, operating by way of substitution only, not as a revocation of the devise; and therefore extending to the estates to be purchased with the personal estate. *Lord Carrington v. Payne*. - - - - - V. 404
24. Devise revoked by a contract for sale. - - - - - V. 654
25. A devise is not revoked by a mortgage in fee to the devisee. *Barter v. Dyer*. - - - - - V. 656
26. Whether a Will was revoked by marriage and the birth of a child under particular circumstances, *quære* (a). - V. 663
27. Residuary bequest cancelled by striking through with a pencil all the disposing part, leaving only the general description, with notes in pencil in the margin, indicating alteration, and a different disposition of certain articles; a resulting trust for the next of kin. *Mence v. Mence*. - - - - - XVIII. 348
- WITNESS.**—1. Competent; though interest at his examination; if not at the execution of the Will and the death.
2. Subscribing, being in *Jamaica*, dispensed with.
3. Legacy to subscribing witness void.
1. Witness to a Will, not interested at the execution, and death of the testator, is competent, though interested at his examination. *Brograve v. Winder*. - - - - - II. 634
2. A subscribing witness to a Will, disposing of real estate, being in *Jamaica*, his evidence was dispensed with. *Lord Carrington v. Payne*. - - - - - V. 404
3. Legacy to a subscribing witness to a Will, though of personal property only, void under the Statute 25 Geo. 2. c. 6, extending to all Wills and Codicils. *Lees v. Summersgill*. - - - - - XVIII. 508
- See *Advancement* 3. *Assets*. *Baron and Feme* (*Separate Property* 3. 16. 20.) *Bastard* 1. *Charge* 6. 8. 9.

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(a) See the note, Vol. V. page 664.

*Charity* 84. *Commission of Review* 1. *Condition* 2. 4. 7. *Construction*. *Contingent Interest* 2. *Contract* 73. 74. 75. *Copyhold* 8. 9. *Creditor* 8. *Cross Remainders* 2. *Debt* 1. *Devise*. *Distribution* 1. *Election* 4. 5. 21. 23. 25. 38. (*Heir* 3.) *Estate* 59. (*Conversion* 6.) (*Tail* 3.) *Evidence* 7. 9. 35. (*Parol* 12.) (*Pedigree* 6.) (*Presumptive* 2. 10.) (*Witness* 9. 27. 28. 31.) *Executor*. *Executory Devise*. *Executory Trust* 2. 3. 4. 5. *Exoneration* 10. 11. *Frauds, Statute of*. *Fraudulent Devises, Statute of*. *Grand-child* 2. *Guardian* 3. *Heir*. *Implication* 3. 4. *Interest* 24. *Issue* 1. 6. *Jurisdiction* 4. 18. *Lease* 6. (*Renewal* 12.) *Legacy*. *Limitation* 2. *Lunacy* 73. *Maintenance* 1. 2. 3. 5. *Marriage* 6. (*Consent* 2.) *Money* 1. *Mortgage* 11. *Next of Kin* 1. *Perpetuity* 3. 6. 21. *Possibility* 1. *Power* 1. 6. 18. 19. 33. (*Appointment* 16. 39. 40. 45.) *Practice* 54. 146. 178. 185. *Probate*. *Purchase*. *Representative*. *Residue* 1. 2. *Resulting Trust*. *Revocation* 9. 28. *Satisfaction* 8. 22. 32. *Specific Devise, &c.* *Survivor* 1. *Tenant in Common* 4. *Trust* 2. 3. 73. 84. 85. 109. (*Resulting* 3. 6. 9.) *Vesting*. *Voluntary Settlement, &c.* 2. 21.

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See *Injunction* 40.

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## WITNESS, EXAMINED DE BENE ESSE.

See *Practice* 192.

## WORDS.

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## WRIT DE VENTRE INSPICIENDO.

See *Bill to perpetuate Testimony* 2.

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## WRIT OF ACCEDAS AD CURIAM.

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## WRIT OF ASSISTANCE.

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## WRIT OF DOWER.

See *Dower* 2. 3. 4.

WRIT OF ERROR.  
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WRIT OF NE EXEAT REGNO.  
See *Ne exeat Regno*.  
WRIT OF RIGHT.  
See *Infant* 27.  
WRIT OF WASTE.  
See *Waste* 16.  
WRITTEN CONTRACT.  
See *Frauds, Statute of*, 13. 14.

YORK.

- 1. Custom.
  - 2. Custom as to barring child's share by advancement.
  - 1. Custom of *York*. - - - - - V. 790
  - 2. Custom of *York* as to advancement barring the child's share of the customary estate. - - - - - IX. 425
- See *Chester. Power (Appointment 49.)*

YOUNG HEIR.  
See *Account* 6. *Heir* 3. 13.  
YOUNGER CHILD.  
See *Satisfaction* 33. *Will* 275.

END OF THE TWENTIETH VOLUME.

# ERRATA, &c.

*The lines are computed from the commencement of the original page, whether numbered at the top or in the margin.*

Page	VOL. I.
91, <i>Anon.</i>	For 'defendant' read 'plaintiff.'
131, l. 13, 14, marg. l. 13, 14.	{ for 'under the joint commission' read 'against the joint estate.'
Table, <i>BANKRUPT</i> 3,	
199, l. 4,	for 'impossible' read 'possible.'
	VOL. II.
	Table, <i>WILL</i> 3, for 'as it is' read 'it is as.'
	VOL. III.
327, marg. l. 2, from bottom.	for 'B.' read
Table, <i>WILL</i> 32, l. 6,	{ 'A.'
331, l. 24, for 'where' read 'whether.'	
552, note (22), for 'VIII.' read 'VII.'	
693, l. 6, for 'formally' read 'formerly.'	
Table, <i>ASSETS</i> 4, for 'intrinsic' read 'ex-	
	'trinsick.'
..	<i>BARON AND FEME</i> 1, for 'to make'
	read 'made.'
	VOL. IV.
	Table, for 'RESTITUTION' read 'RESTRIC-
	'TION.'
	VOL. V.
1, marg. erase 'Nov. 6th.'	
.. l. 1, for 'taken' read 'took.'	
.. l. 2, at the end, add 'in the year 1800.'	
Table, <i>COPYRIGHT</i> 1, l. 3, for 'was' read	
	'was not' entitled.
..	<i>LIEN</i> , for 'corn' read 'coin.'
..	<i>MORTGAGE</i> 3, l. 1, for 'debtor' read
	'defendant.'
..	<i>PARENT AND CHILD</i> 2, l. 5, for 're-
	selling' read 'resettling.'
	VOL. VI.
153, marg. l. 11, 12.	{ for 'after-named' read 'hereinafter named.'
Table, <i>APPOINTMENT</i> 1, l. 4, 5.	
400, l. 3, from bottom, erase 'it.'	
631, note, l. 7, from bottom, for 'herself' read	
	'himself.'
705, l. 10, erase 'it.'	
Table, <i>BANKRUPT</i> 14, l. 3, for 'execute'	
	read 'exercise.'
..	<i>REVOCATION</i> 2, l. 1, for 'whether'
	read 'wherever.'
	VOL. VII.
242, l. 4, for 'over-rule' read 'allow.'	
Table, <i>LUNATIC</i> 2, l. 2, for 'injunction'	
	read 'inquisition.'
..	<i>POWER</i> 9, l. 4. for 'will aid' read
	'will in certain cases aid.'

Page	VOL. VIII.
	Table, <i>NE EXEAT REGNO</i> 3, l. 8, for 'be put'
	read 'put him.'
	VOL. IX.
230, l. 7, for 'he' read 'it.'	
442, l. 22, for 'has' read 'had.'	
Table, <i>ACCOUNT</i> 4, l. 2, before 'misrepresen-	
	tation' insert 'no.'
..	<i>INFANT</i> 1, l. 1, for 'daughter' read
	'defendant.'
..	<i>LEASE</i> 3, l. 11, for 'fraud' read 'fund.'
..	<i>PRACTICE</i> 2, l. 6, for 'discussed' read
	'disused.'
..	<i>VENDOR AND VENDEE</i> , for 'Surety'
	read 'Agent.'
	VOL. X.
206, l. 25, to 'antecedent' add 'debt.'	
Table, <i>LAND-TAX</i> , for 'appointment' read	
	'apportionment.'
..	<i>MARRIAGE</i> 2, l. 1, to 'of' add 'a
	settlement.'
	VOL. XI.
18, l. 11, for 'deposition' read 'disposition.'	
	VOL. XII.
Table, <i>ANNUITY</i> , for 'appointment' read	
	'apportionment.'
..	<i>PLEADING</i> 2, l. 12, for 'to' read 'in,'
	for 'fact' read 'facts.'
..	<i>RESIDUE</i> , for 'execution' read 'exe-
	cutor.'
	VOL. XIII.
162, l. 16, for 'continue' read 'discontinue.'	
509, line the last, for 'agreed' read 'argued.'	
Table, <i>ASSETS</i> , for 'execution' read 'exe-	
	cutor.'
..	<i>CONVERSION OF ESTATE</i> 2, l. 5, for
	'any' read 'his.'
..	<i>EVIDENCE</i> . In the references, for
	'Legacy' read 'Legitimacy.'
	VOL. XIV.
38, l. 24, for 'unable' read 'enabled.'	
109, l. 20, for 'formerly' read 'formally.'	
119, l. 35, to 'tell' add 'her.'	
287, l. 8, for 'even' read 'ever.'	
461, l. 20, for 'doctrine' read 'docket.'	

## ERRATA, &c.

### Page Vol. XV.

- 288, l. 9, for 'apply' read 'supply.'  
 Table, PRINCIPAL AND SURETY 2, line 5,  
 erase 'not.'  
 .. TRUST 2, l. 2, for 'to' read 'by.'  
 .. VESTING 3, l. 11, for 'with' read  
 'without.'

### Vol. XVI.

- Table, VENDOR AND VENDEE 12, l. 2, for  
 'grantees' read 'grantors.'

### Vol. XVII.

- 290, marg. l. 2.  
 Table, VENDOR, &c. 2, l. 1, { Before 'pur-  
 chase,' insert  
 'the plea of.'

### Vol. XVIII.

- 12, marg. l. 6. { to 'obtained' add  
 Table, CONTRACT, l. 3, { 'from a person in-  
 toxicated.'  
 15, l. 24, for 'agreement' read 'argument.'  
 236, l. 21, for 'credit' read 'creditor.'  
 .. l. 22, for 'takes' read 'take.'  
 319, marg. l. 8. { for 'actual' read  
 Table, REHEARING, l. 4, { 'annual.'

### Vol. XVIII.—continued.

- Table, ARBITRATION, for 'evidence; and  
 'set aside by the Court' substitute  
 'by the arbitrators; of which there  
 'ought to be clear, distinct evi-  
 'dence, and an affidavit by the ar-  
 'bitrators, to induce a Court to  
 'Equity to set aside the award; or  
 'a Court of Law to refuse to make  
 'it a rule of Court.'  
 .. BANKRUPT 8, l. 4, for 'on the Com-  
 missioners' read 'in the creditors.'  
 .. FORFEITURE 4, l. 2, for 'Mod.' read  
 'Mod.'  
 .. PLEADING 1, l. 1, for 'constructing'  
 read 'construing.'

### Vol. XIX.

- 344, marg. l. 19, to 'Regno' add 'and aailable  
 writ at law.'  
 653, l. 7, for 'in' read 'is.'

### Vol. XX.

- 458, No. 34, after 'however' insert 'small.'  
 .. No. 35, for 'after' read 'hereinafter.'

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 CHANCERY, of which this is the TWENTIETH and concluding  
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